No. 5

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

WILLIAM J. POWERS, JR., *Petitioner,*

vs.

PAUL SLATON, *Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

WILLIAM J. POWERS
664 Oakton Street
Des Plaines, Illinois
*Plaintiff Pro Se*

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*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner, William J. Powers, Jr., a citizen of Illinois and plaintiff-appellant below, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on the 13th day of March 1963, in the cause pending therein entitled *William J. Powers, Jr.* v. *Paul Slaton*, Docket Number 14,972.

## OPINIONS BELOW

The opinion of the trial court, the United States District Court for the Eastern District of Kentucky, sitting

at Lexington, was entered on March 29, 1962 and is included herein in Appendix "A".

The opinion of the United States Court of Appeals for the Sixth Circuit is reported below at ..... F. 2nd ....., and is included herein in Appendix "B".

Plaintiff's Motion for extension of time to file a petition for review and letter from the Clerk of the Court of Appeals for the Sixth Circuit returning the motion as untimely are included herein in Appendix "C".

## JURISDICTION

The decision and judgment of the Court of Appeals for the Sixth Circuit sought to be reviewed was entered on March 13, 1963 and has not been reported as yet but is filed with Carl Reuss, Clerk of the Court of Appeal for the Sixth Circuit in Docket No. 14,972.

The jurisdiction of this Court to review the judgment below by writ of certiorari is conferred by Title 28 U.S.C. 1254(1); 2101(c) 2106.

## QUESTIONS PRESENTED

1. Whether the United States Hospital Reservation, at Lexington, Kentucky—on which is located a United States Veterans Administration Hospital—is a federal enclave under the exclusive jurisdiction of the United States within the meaning of Article 1, Section 8, Clause 17 of the Constitution of the United States.

2. Whether an inmate of the Veterans Hospital who is confined therein by the government of the United States is thereby subject to the jurisdiction of the Circuit Court of Fayette County, Kentucky.

3. Whether a thirty-five day commitment order entered against an inmate of the Veterans Hospital on the same day a petition was filed asking for a lunacy inquest violates the due process of law contrary to the Fourteenth Amendment.

4. Whether a lunacy inquest, growing out of the thirty-five day commitment violated the due process of law contrary to the Fourth, Fifth, and Fourteenth Amendments where the inmate of a Veterans Hospital is restrained within a federal enclave and prevented by federal officers from appearing and defending himself.

## CONSTITUTIONS AND STATUTES INVOLVED

Article 1, Section 8, Clause 17, of the Constitution of the United States.

Article IV, Section 2 of the Constitution of the United States.

The Fourth Amendment of the Constitution of the United States.

The Fifth Amendment of the Constitution of the United States.

The Fourteenth Amendment of the Constitution of the United States.

The Bill of Rights of the Constitution of the Commonwealth of Kentucky in Sections 1, 2, 7, 10, 14, 16, and 26.

Chapter 16 of the Acts of 1936 of the Commonwealth of Kentucky.

Chapter 16 of the Acts of 1928 of the Commonwealth of Kentucky which in 1946 were also found in Chapter 202 of the Kentucky Revised Statutes.

Kentucky Revised Statutes 3.010 "Consent of State of Acquisition of Lands."

## STATEMENT OF THE CASE.

### A. Chronology of events from January of 1942 until May of 1947.

The plaintiff, William J. Powers, Jr., was a twenty-four year old resident of Chicago, Illinois and a citizen of the State of Illinois when he was inducted into the Army of the United States by reason of the Selective Service Act on January 8, 1942.

The plaintiff was sent to Fort Knox, Kentucky, in the latter part of January of 1942 for basic training and remained there until May of 1942 when he was sent to Officer Candidate Class No. 4 at the Armored Second at Fort Knox.

The plaintiff was discharged for the convenience of the government, to accept a commission, on August 21, 1942. (R. 25)

The following day, August 22, 1942 the plaintiff was commissioned as a Second Lieutenant, Cavalry, Army of the United States, for the duration of the emergency plus six months. (R. 27)

The plaintiff thereafter served as an officer of the Army until 1943 when he was promoted to First Lieutenant. He continued his service in various capacities until January of 1946 when he was sent to the Separation Center at Camp Beale, California for relief from active duty by reason of length of service. His terminal leave expired in March of 1946 and he reverted to an inactive duty status. (R. 31-34)

The plaintiff was offered and accepted a second commission at the Separation Center but this time as a First Lieutenant, Cavalry, Officers Reserve Corps, Army of the United States, under the authority of the National Defense Act of 1933, as amended, for a period of five years. (R. 28-30)

In June of 1940, the plaintiff received a letter from the Commanding General, Second Army, urging the plaintiff to return to active duty because of a critical shortage of officers with plaintiff's training and military background. (R. 35-38)

In September of 1946 the plaintiff returned to active duty at Fort Knox for one year. (R. 37, par. 21)

In October of 1946 the plaintiff was hopitalized at Fort Knox through a series of circumstances which the Department of the Army has never explained to the plaintiff.

Within a very few days the plaintiff was transferred to Valley Forge General Hospital at Phoenixville, Pennsylvania where he remained most of the time until May of 1947 except when he was on leave.

The plaintiff appeared before an Army Retiring Board on March 25, 1947 and was given sixty days leave to await the approval of the decision of the Retiring Board by the War Department.

The plaintiff returned to Valley Forge General Hospital before the sixty days leave had expired to inquire about the approval of the decision of the Retiring Board by the War Department.

Instead of finding out whether it had been approved, he was ordered to report to the Veterans Administration Hospital at Lexington, Kentucky on or about May 4, 1947, which he did on March 4, 1947. (R. 39-40, par. 8; R. 41, par. 33)

**B. The Thirty-Five Day Commitment of May 17, 1947.**

When the plaintiff reported to the Veterans Hospital on May 4, 1947 he was confined in a locked ward by the hospital staff and not allowed to leave the premises.

On May 15, 1947 the clinical director and a ward doctor wrote a letter to the Clerk of the Circuit Court of Fayette explaining that the plaintiff was a patient there and asking that an inquest be held concerning him. (See Appendix "E")

On May 17, 1947 a petition was filed in the Circuit Court of Fayette County, Kentucky by one L. H. Mulligan that "he was reliably informed that William J. Powell" was a person of unsound mind and a lunatic and asking that an inquest be held concerning him. (R. 9-10)

On May 17, 1947 two local doctors, Mulligan and Shannon, were appointed by the Circuit Court to examine the alleged lunatic and report to the Court. (R. 9-10)

On May 17, 1947 the local doctors filed their affidavit that they had examined the alleged lunatic and that he would require further care. The affidavit was merely a printed form issued by the Welfare Department and did not state any facts upon which their opinion was based. (See Appendix "F").

On May 17, 1947 the Judge of the Circuit Court issued a thirty-five day commitment order and an order of arrest against the plaintiff under the authority of the provisions of Chapter 16, of the Acts of 1936. (See Appendix "F")

The plaintiff was confined in the Veterans Hospital all of the time these events of May 17, 1947—a Saturday—were occurring and had no knowledge of any of them. (Appendix "E")

### C. The Lunacy Inquest of June 9, 1947 Concerning the Plaintiff.

On June 9, 1947 a lunacy inquest concerning the plaintiff was held in the Circuit Court of Fayette County, Kentucky without the presence of the plaintiff and he was adjudged a person of unsound mind; that his mother was unknown; that his father was dead; that he had been of unsound mind for several years; and that he was a resident of Lexington, Kentucky. (R. 9)

The presiding judge, who was required by statute to prepare a history of the patient's case, found that the alleged mental illness began five years before June of 1947 when the plaintiff was twenty-five years of age or in other words it began just after the plaintiff was inducted into military service in 1942. (R. 9-10)

### D. First Appointment of a Committee on June 26, 1947.

In June of 1947, plaintiff's wife after consultation with some members of the staff of the Veterans Administration was sent to a Lexington attorney who filed a petition in the County Court of Fayette County requesting the appointment of the plaintiff's wife as committee so that she would be able to receive the retired pay of the plaintiff for the support of herself and their infant daughter while the plaintiff was in the Veterans Hospital.

### E. The Second Appointment of a Committee on August 24, 1949 and the First Appearance of the Defendant, Paul Slaton.

The record of the County Court of Fayette County, Kentucky, which is Appendix "L" reveals that the wife of the plaintiff resigned on August 24, 1949 as committee and that the defendant Paul Slaton, appeared for the Citizens Bank and Trust Company and took an oath of office in a proceeding for the appointment of a committee

although the plaintiff had returned to his home in Chicago, Illinois and had been residing again in Chicago since the first part of February of 1949. (Appendix "B")

This is the first recorded appearance of the defendant, Paul Slaton, in any of the proceedings referred to in this action. So far as is known to the plaintiff, the defendant had no part of any proceeding before August 24, 1949.

**F. Institution of the present action in the United States District Court for the Eastern District of Kentucky at Lexington on July 17, 1961.**

On July 17, 1961, the plaintiff filed suit, claiming diversity of citizenship as the basis of jurisdiction, against the defendant; Paul Slaton, asking that he be compelled to cease and desist from interfering with plaintiff's right to receive retired pay from the Department of the Army. (R. 2)

The plaintiff further alleged the existence of substantial federal questions as would appear later in the complaint. (R. 2)

On August 7, 1961, the defendant filed a motion to dismiss the complaint of the plaintiff denying the plaintiff's allegations and supporting the motion with an affidavit of the defendant to which was attached records of proceedings in the Circuit and County Court of Fayette County. (R. 8)

On August 18, 1961 the plaintiff filed a motion to oppose the admission of the orders and judgment of the Circuit Court of Fayette County into evidence against him together with the plaintiff's counter-affidavit supported with exhibits of records of military service and residence. (R. 11-20 inc.; R. 21-44 inc.)

On September 7, 1961 the plaintiff filed additional affidavits of two reputable attorneys of Chicago that they had known and seen the plaintiff in Chicago all during the period from about March of 1949 until September of 1961.

The motion to dismiss under Rule 12 was later considered by the Court as a motion for summary judgment under Rule 56 and was briefed and argued. The District Court dismissed for failure to state a cause of action against the defendant. The District Court did not make any finding of fact.

The Court of Appeals for the Sixth Circuit confirmed the order of dismissal on March 13, 1963. (Appendix "B")

Neither the District Court or the Court of Appeals made any reference to the plaintiff's motion to oppose the admission of the records and judgment of the Circuit Court of Fayette County, Kentucky into evidence against him nor his counter-affidavit nor the supporting exhibits.

All that the Court of Appeals said about the motion was contained in the next to the last paragraph of the opinion as follows:

> "Appellant presents additional questions for review by this court involving the validity of the State Court proceedings. The courts of the Commonwealth of Kentucky afford adequate remedies to a party seeking a determination as to the validity of State Court proceedings." (Appendix "B")

The Court of Appeals thereby summarily dismissed plaintiff's argument that if the State Court proceedings of 1947 were void and that the defendant and any others associated with him were trespassers against the right of the plaintiff to have his own personal property.

The plaintiff now wishes to bring this case before the Court on a writ of certiorari to review the decisions of the lower courts because this Court has never ruled on the questions presented.

## REASONS FOR GRANTING THE WRIT.

This Supreme Court has ruled many times on the nature and extent of the jurisdiction exercised by the Federal Government over federal enclaves under the authority of Article 1, Section 8, Clause 17 of the Constitution of the United States of America. See *Fort Leavenworth Railroad Company* v. *Lowe*, 114 U.S. 525; 5 S. Ct. 995; 29 Law Ed. 264 and *Arlington Hotel Company* v. *Fant*, 278 U.S. 439; 49 S. Ct. 227; 73 Law Ed. 447.

The most recent case known to the plaintiff is that *Paul* v. *United States*, 371 U.S. 245; 83 Sup. Ct. 426; 9 Law Ed. 2nd 292.

This Court has never had occasion in the past to rule on the nature and extent of the jurisdiction exercised by the Federal Government over Veterans Administration Hospitals, although part of the problem was discussed in *United States* v. *Oregon*, 366 U.S. 643; 81 S. Ct. 1278; 6 Law Ed. 2nd 575 where this Court held that the distribution of the estate of a Veteran who died resident in a Veterans Hospital was a matter of federal law and not state law.

It is well known that it is the established policy of the Veterans Administration to seek and obtain exclusive jurisdiction over all Veterans Administration facilities with the exception of a few scattered offices so the administrative staff of the Veterans Arministration does not have to comply with state laws. This has been particularly true in regard to the licensing of physicians and surgeons, medical personnel generally, police and fire regulations of the several states, garbage and disposal regulations of the several states, and public health regulations of the sev-

eral states to mention a few reasons. These conditions and reasons were discussed quite fully in the *Report of the Interdepartmental Committee for The Study of Jurisdiction Over Federal Areas Within The States* submitted by the Attorney-General to the President in 1956 and 1957.

Both the District Court and the Court of Appeals completely ignored the existence of these substantial federal questions and based their decisions on the premise that th defendant was protected in his actions by the existence of the state judgments.

It would seem therefore that the first question to decide is that of the status of the Veterans Hospital as a federal enclave.

## ARGUMENT.

**1. Whether the United States Hospital Reservation, at Lexington, Kentucky—on which is located a United States Veterans Administration Hospital—is a federal enclave under the exclusive jurisdiction of the United States within the meaning of Article 1, Section 8, Clause 17 of the Constitution of the United States.**

The Annual Report of the Director of the Veterans Bureau for 1929 stated on page 14 that a 250 bed hospital at Lexington, Kentucky would be constructed with funds from the appropriation of the Act of May 23, 1928; 45 Stat. 715; 70th Congress, 1st Session.

The Annual Report of the Administrator of Veterans Affairs for 1931 stated on page 20 that the Veterans Administration owned the lands and buildings at all Veterans Hospitals (except one hospital under lease at Kansas City, Mo.), specifically including the one at Lexington.

In this regard it must be remembered that Revised Statute 355, as amended, provided that all lands for public purposes purchased by public funds could be acquired only after the Attorney-General had secured a clear title for the United States to such lands.

The only retro-cession of title by the United States to the land of the Veterans Administration Hospital at Lexington, Kentucky was discussed in House Report No. 1267 of the 72nd Congress, 1st Session wherein a fifteen foot strip of land in front of the hospital was recommended for retro-cession and was in fact retro-ceded by Congress to the Commonwealth of Kentucky by the Act

of June 23, 1932; 47 Stat. 332; 72nd Congress, 1st Session to enable the Commonwealth of Kentucky to construct a turnpike past the front of the hospital. (See Appendix "D")

The consent of the Commonwealth of Kentucky to the acquisition of lands for public purposes was given by the Act of August 16, 1892, later known as Section 2376 of the Kentucky Statutes (1903 edition) and in 1947 was known as Kentucky Revised Statute 3.010. (See Appendix "K")

This statute was construed by the Court of Appeals of Kentucky in *Commonwealth* v. *King*, 252 Ky. 699; 68 S.W. 2nd 45 where that Court fully discussed most of the leading cases from this Court and decided that the Legislature of Kentucky had not reserved any jurisdiction under the statute except the right to serve civil and criminal process within a federal territory for causes that arose within the Commonwealth outside the federal territory.

This same statute has been construed once by this Court in the case of *Howard* v. *Commissioners of the Sinking Fund of the City of Louisville*, 344 U.S. 624; 73 S. Ct. 465; 97 Law Ed. 617, where this Court held that Congress had retro-ceded jurisdiction under the Buck Act to tax personal property in the case in question.

The third qualification for exclusive jurisdiction was discussed in *United States* v. *Oregon*, 366 U.S. 643; 81 S. Ct. 1278; 6 Law Ed. 2nd 575, where this Court held that:

> "Congress undoubtedly has the power—under its constitutional powers to raise armies and navies and to conduct wars—to pay pensions, and to build hospitals and homes for veterans."

It was said by this Court in *Arlington Hotel* v. *Fant*, 278 U.S. 439, at page 455 that:

> "It was certainly a wise provision which with the consent of the State brought within exclusive national jurisdiction the hospital buildings and accessories and all the forty-four springs from which the healing waters came in order to secure to the Government their complete police protection, preservation and control. This justified acquisition of the springs and hospital for the exclusive jurisdiction of the United States under clause 17, Section 8, Article 1 of the Constitution."

There can be no effective argument against the premise that a Veterans Hospital is within the power of Congress to establish as a necessary public building and establishment within the meaning of Article 1, Section 8, Clause 17 of the Constitution.

This case now before this Court presents a situation where Congress has purchased lands for a public purpose with the consent of the Legislature of the Commonwealth of Kentucky investing the United States with exclusive jurisdiction under Article 1, Section 8, Clause 17 of the Federal Constitution.

**2. Whether an inmate of the Veterans Hospital who is confined therein by the government of the United States is thereby subject to the jurisdiction of the Circuit Court of Fayette County, Kentucky.**

This Court seems to have already decided the question in substance by such opinions as that in *Paul* v. *United States*, 371 U.S. 245, where at page 263, this Court said:

> "The power of Congress over federal enclaves that come within the scope of Art. 1, Sec. 8, cl. 17, is obviously the same as the power of Congress over the District of Columbia. The cases make clear that the

grant of 'exclusive' legislative power of Art. 1, Sec. 8, Cl. 17, by its own weight, bars state regulation without specific congressional action."

Also, in *Paul* v. *United States*, *supra*, at page 267, this Court said:

> "Whether the United States has acquired exclusive jurisdiction over a federal enclave is a federal question. As stated in *Silas Mason* v. *Tax Commission*, 302 U.S. 186, 197:
>
> > 'The question of exclusive territorial jurisdiction is distinct. That question assumes the absence of any interference with the exercise of the functions of the Federal Government and is whether the United States has acquired exclusive legislative authority so as to debar the State from exercising any legislative authority, including its taxing and police power, in relation to the property and activities of individuals and corporations within the territory.'"

In an earlier case, that of *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U.S. 525; this Court said at pages 532-533 that:

> "When the title is acquired by purchase by consent of the Legislatures of the States, the federal jurisdiction is exclusive of all State Authority. This follows from the declaration of the Constitution that Congress shall have 'like authority' over such places as it has over the district which is the seat of the government; that is, the power of 'exclusive legislation in all cases whatsoever'. Broader or clearer language could not be used to exclude all other authority than that of Congress; and that no other authority can be exercised over them has been the uniform opinion of Federal and State tribunals, and of the Attorneys General."

And also in *Fort Leavenworth*, *supra*, at page 537, this Court said in quoting *Sinks* v. *Reese*, 19 Ohio St. 306, with approval, that:

> "And it was held that, upon purchase of the territory by the United States, with the consent of the Legislature of the State, the general government became invested with exclusive jurisdiction over it and its appurtenances in all cases whatsoever; and that the inmates of such asylum resident within the territory, being within such exclusive jurisdiction, were not residents of the State so as to entitle them to vote, within the meaning of the Constitution, which conferred the elective franchise upon its residents alone."

There is no useful purpose in pursuing this line of argument any further on this point because all of the cases of this Court agree on this position.

It may be useful however to recall that plaintiff has alleged and made affidavit that he was not present in the Circuit Court on May 17, 1947 nor on June 9, 1947 nor at any other time. (R. 11 *et seq.*; R. 21 *et seq.*) The defendant has not only agreed with the statements of the plaintiff but has urged these facts himself in his own arguments even though for different reasons.

It is not controverted before this Court that the plaintiff was in fact confined within the Veterans Administration Hospital all during the events discussed herein.

The affidavit of the Veterans Hospital doctors (Appendix "E") introduced into the record by the defendant; the thirty-five day commitment order (Appendix "F"); the petition filed on May 17, 1947 states on its face that the Veterans Hospital was the one having custody of the plaintiff (R. 9) and it was the defendant who introduced the petition into the record of this case; the

motion of the plaintiff alleges that the plaintiff was confined in the hospital all during these events (see Record, page R. 15, par 21; R. 16, par. 25); and finally the affidavit of the plaintiff relates that the plaintiff was confined within the hospital. (See Record, page R. 21 *et seq.*).

The law and the facts of this case clearly prove that the Circuit Court of Fayette had and has no jurisdiction within the limits of the government hospital reservation upon which the Veterans Administration Hospital is located because of the operation of Article 1, Section 8, Clause 17 of the Federal Constitution. (R. 13, par. 8)

**3. Whether a thirty-five day commitment order entered against an inmate of a Veterans Administration Hospital on the same day a petition was filed asking for a lunacy inquest violates the due process of law contrary to the Fourteenth Amendment.**

The defendant has urged that the United States District Court was without jurisdiction to review the judgments of the State Court which the defendant introduced in support of his motion to dismiss as a defense of his actions. (R. 8).

The leading and basic case on that problem is that of *Thompson* v. *Whitman*, 18 Wall. 457; 21 Law Ed. 897. At page 467, this Court said:

> "Thus in *Elliott et al.* v. *Peirsol et al.*, it was held that the Circuit Court of the United States for the District of Kentucky might question the jurisdiction of a county court of that State to order a certificate of acknowledgment to be corrected; and for want of such jurisdiction to regard the order as void. Justice Trimble, delivering the opinion of this court in that case, said: 'Where a court has jurisdiction, it has a right to decide every question which occurs in the

cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void."

And also in *Thompson* v. *Whitman*, supra on page 468:

"But it must be admitted that no decision has ever been made on the precise point involved in the case before us, in which evidence was admitted to contradict the record as to jurisdictional facts asserted therein, and especially as to facts stated to have been passed upon by the court.

"But if it is once conceded that the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived, how any allegation contained in the record itself, however strongly made, can affect the right so to question it. The very object of the evidence is to invalidate the paper as a record. If that can be successfully done no statements contained therein have any force."

The doctrine of the *Thompson* case was brought down to our time in the well-known case of *Williams* v. *North Carolina*, 325 U.S. 226; 65 S. Ct. 1092; 89 Law Ed. 1577. At page 229, this Court said that:

"But the Clause does not make a sister-State judgment a judgment in another State. The proposal to do so was rejected by the Philadelphia Convention. 2 Farrand, the records of the Federal Convention of 1787, 447-48. 'To give it the force of a judgment in another state, it must be made a judgment there' *M'Elmoyle* v. *Cohen*, 13 Pet. 312, 325. It can be made a judgment there only if the court purporting to render the original judgment had power to render such a judgment. A judgment in one State is conclusive

upon the merits in every other State, but only if the court of the first State had power to pass on the merits—had jurisdiction, that is, to render judgment.

"It is to late now to deny the right collaterally to impeach a decree of divorce made in another State, by proof that the court had no jurisdiction, even when the record purports to show jurisdiction. . . It was 'too late' more than forty years ago. *German Savings Society* v. *Dormitzer*, 192 U.S. 125, 128."

The plaintiff raised Fourteenth Amendment questions of denial of the due process of law in the complaint in paragraph 13 of Count 1 and paragraphs 10 and 11 of Count 2 at a time when the plaintiff did not have complete information. (R. 5)

After the defendant filed his motion to dismiss and attached copies of the records of the Circuit and County Courts of Fayette in support thereof, the plaintiff filed a counter-motion in opposition to the introduction of those alleged records into evidence against him. (R. 11-19)

The plaintiff raised specific Fourteenth Amendment questions in paragraphs 3, 4, 5, 6, 7, 17, 18, 20, 22, and 30, of his motion in opposition to the motion to dismiss, which were never ruled on by either the District Court or the Court of Appeals. (R. 11-19 inc.)

This Court said in the *Civil Rights Cases*, 109 U.S. 3; 3 S. Ct. 18; 27 Law Ed. 835; at page 11 that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment. It has a

deeper and broader scope. It nullifies and makes void all State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them equal protection of the laws."

In a later case, that of *Meyers* v. *State of Nebraska*, 262 U.S. 390; 43 S. Ct. 625; 67 Law Ed. 1042 that:

> "The problem of our determination is whether the statute as construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment. 'No State shall . . . deprive any person of life, liberty, or property, without due process of law.'"
>
> "While this Court has not attempted to define with exactness the *liberty* thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children; to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

These cases were brought down to the present day in the language of *Shelley* v. *Kraemer*, 334 U.S. 1; 68 S. Ct. 836; 92 Law Ed. 1161; when this Court said at page 14:

> "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment is a proposition which has long been established by decisions of this Court. That principle

was given expression in the earliest case involving the construction of the terms of the Fourteenth Amendment. Thus, in *Virginia* v. *Rives*, 100 U.S. 313, 318 (1880), this Court stated: 'It is doubtless true that a State may act through different agencies,—either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the state denying the equal protection of the laws, whether it be action by one of these agencies or by another.''

The facts of this case are not controverted for the most part. The plaintiff was transferred administratively from Valley Forge General Hospital as a Lieutenant on active duty in a hospital status to the Veterans Administration Hospital. (R. 39-42, inc.)

The order from Valley Forge General Hospital, exhibit "Q" (R. 40, par. 8) relates that on arrival at the Veterans Hospital the plaintiff was relieved from active duty and reverted to an inactive duty status which of course meant that the plaintiff was not subject to military authority after May 4, 1947.

It is only simple justice which points out that the original fault in this case was the negligence of the office of the Adjutant-General of the Army which office had the duty of returning the plaintiff to the state of his legal residence in Illinois and his home in Chicago upon his relief from active duty.

However the Manager of the Veterans Hospital compounded the negligence of the Adjutant-General's office by not independently determining the legal residence of the plaintiff and by confining the plaintiff in the hospital without legal authority.

The so-called affidavit of the Veterans Hospital doctors, contained in a letter to the Clerk of the Circuit Court of Fayette County on May 15, 1947 was not the petition filed

in the case because there was no case pending on May 15, 1947 between the *Commonwealth of Kentucky* v. *William J. Powers, Jr.* (Appendix "E")

The petition entitled *Commonwealth of Kentucky* v. *William J. Powell* was filed on May 17, 1947 by L. H. Mulligan. (R. 9)

A thirty-five day commitment order under the authority of Chapter 16, Acts of 1936, was issued on the same day, May 17, 1947, against the plaintiff without the presence of the plaintiff in court. (See Appendix "F")

Both the affidavit of the doctors from the Veterans Hospital and the petition filed on May 17, 1947 related that the plaintiff was actually in the Veterans Hospital and not running at large in the county. (R. 9: Appendix "E")

It is perfectly obvious from the record that the plaintiff did not have either notice or the opportunity to appear and defend himself.

In *McFarland* v. *Kentucky*, 249 Ky. at pages 129 and 130, the Court of Appeals of Kentucky said (60 S.W. 2d 360) that:

> "The most sacred rights of the individual are involved in lunacy proceedings—his freedom of person and his right to control his property and for this reason the Legislature has provided certain safeguards for his protection. Our statute prescribes a certain method of procedure to determine whether persons are insane and it must be followed strictly. The inquest in the instant case was not conducted as prescribed but, on the contrary, substantially every requirement of the statute was ignored, and it follows that the judgment declaring the appellant to be a person of unsound mind was and is void."

In *Stewart* v. *Taylor*, 111 Ky. 247 (63 S.W. 783) at page 253, the Court of Appeals said:

> "The mere fact that one may be believed to be a lunatic will not waive the necessity of notice, because that is the very question to be tried. He is entitled to the presumption of sanity until he has been adjudged otherwise on the inquest. To say that one is insane, and therefore need not be notified of the proceeding, is to decide the very question to be, and before it is, tried."

The Supreme Court of the United States, in the case of *Mullane* v. *Central Hanover*, 339 U.S. 306, at page 314 said:

> "Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that 'The fundamental requisite of the due process of law is the opportunity to be heard.' *Grannis* v. *Ordean*, 234 U.S. 385, 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."

Both the State of Maine and the State of New Mexico struck down their own thirty-five day commitment statutes as violative of the due process clause of the Fourteenth Amendment.

In the *Appeal of Sleeper*, 147 Maine 302; 87 Atlantic 2nd 115, the Supreme Court of Maine held that the Maine thirty-five commitment statute was void because it did not provide notice or the opportunity to appear and defend.

In *Ex parte Romero*, 51 N.M. 201; 181 P. 2nd 811, in a beautifully written opinion, the Supreme Court of New Mexico struck down the thirty-five day commitment statute of that State because it did not provide notice or an opportunity to appear and defend.

The Court of Appeals of Kentucky has construed the thirty-five day commitment statute only once as far as the plaintiff has been able to discover. In the case of *Smith v. Nall*, 242 S.W. 2nd 755-6, that Court said:

> "This is a habeas corpus proceeding. Curt Smith was committed to Eastern State Hospital for observation under the provisions of K.R.S. 202.120 notwithstanding his demand that he be given a trial by jury to determine his mental condition. This section of the Statutes was embodied in Chapter 16 of the Acts of 1936. The title to that Chapter reads as follows: 'An Act to amend Chapter Sixteen (16) of the Acts of one thousand nine hundred twenty-eight (1928) by adding after Section seventy-seven (77) thereof and before Section seventy-eight (78), a new section to be entitled seventy-seven a (77a) and proving for the temporary commitment for care and observation of persons whose mental condition is so abnormal as to require their temporary commitment for care and observation pending a determination whether or not they are insane.'"

And also on the same page, the Court said:

> "It is apparent at once that Chapter 16 of the Acts of 1936 was specifically made a part of Chapter 16 of the Acts of 1928."

It does not appear that the question of notice and due process was made an issue in that case as to opportunity to appear and defend.

However, in *Smith v. Nall, supra*, the Court did declare that Smith was entitled to a jury trial before he could be committed for thirty-five days for observation.

It would seem that if the rationale of that case be properly considered that notice must be given under Section 72

of Chapter 16, Acts of 1928, which in 1946 was Kentucky Revised Statute 202.060(216aa-72) entitled "*Notice; Summons, Arrest of Dangerous Persons.*"

The above statute explicitly stated that the person summoned did not have to appear and defend before three days after service of summons.

In the present case, even if summons had been served on May 17, 1947, which it was not, the court would not have had statutory jurisdiction to proceed further until at least May 20, 1947 because of that statute.

The plaintiff respectfully asks this Court to declare in the language of *Simon* v. *Craft*, 182 U.S. 427; 21 S. Ct. 836; 45 Law Ed. 1165; that every person is entitled to their day in court and that a thirty-five day commitment statute which does not provide notice and reasonable opportunity to appear and defend violates the due process clause of the Fourteenth Amendment of the Constitution of the United States.

It might not be out of place here to suggest that perhaps the Circuit Court has confused the common-law power of emergency detention of dangerous persons with the power of statutory commitment.

It should seem fairly obvious to any reasonable person that when a person is actually dangerous to himself or to other persons in the community by reason of unsoundness of mind that such person may be temporarily restrained or confined until the danger is past or legal proceedings initiated in a proper manner. However, the majority of court opinions have held that it is not lunacy alone that justifies emergency detention but only dangerous lunacy when there is overt danger of harm either to the person concerned or to others.

**4. Whether a lunacy inquest, growing out of a thirty-five day commitment, violated the due process of law contrary to the Fourth, Fifth, and Fourteenth Amendments where the inmate of a Veterans Administration Hospital is restrained within a federal enclave and prevented by Federal officers from appearing and defending himself.**

The one inescapable fact of this case is that the plaintiff's presence in the Veterans Hospital at Lexington, Kentucky was due solely to the exercise of power by the Federal Government through its officers and employees. (R. 39, 40, 41, 42)

The plaintiff was sent there on orders issued by the Department of the Army and he was confined there as a result of those orders although those orders related that he was relieved from active duty.

There are two leading cases from this Court which hold that when a person is held in custody of the United States under claim or color of claim of authority of the United States that such person is immune from state authority until released from the custody of the United States.

In *Ableman* v. *Booth*, 21 Howard 506; 16 Law Ed. 169; at page 523 this Court said:

> "We do not question the authority of a State court, or judge, who is authorized by the laws of the State to issue the writ of habeas corpus, to issue it in any case where the party is imprisoned within its territorial limits, provided it does not appear, when the application is made, that the person imprisoned is in custody under the authority of the United States. * * * But, after the return is made, and the State judge or court is judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. They-they know that the prisoner is within the dominion and jurisdiction of another Government, and that neither the writ of habeas corpus,

nor any other process issued under State authority, can pass over the line or division between the two sovereignties. He is then within the dominion and exclusive jurisdiction of the United States."

And on page 524, *supra*, the Court further said:

"No judicial process, whatever form it may assume, can have any lawful authority outside the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence."

That this was not just an isolated instance is proved by the case known as *Tarble's Case*, 13 Wallace 397. In this case young Tarble lied about his age to enlist in the army. When his father learned about the situation, the father applied to the local Circuit Court of the State of Wisconsin which issued a writ of habeas corpus directed to the lieutenant commanding the detachment in which young Tarble was then detained. At page 402 of 13 Wallace, the Supreme Court of the United States said:

"The question presented may be more generally stated thus: Whether any judge of a State has jurisdiction to issue a writ of habeas corpus, or to continue proceedings under the writ when issued, for the discharge of a person held under the authority, or claim and color of authority of the United States, by an officer of that Government."

And page 403, *supra*, the Court answered the question in the negative:

"The decision of this Court in the two cases which grew out of the arrest of Booth, that of *Ableman* v. Booth, and that of the *United States* v. *Booth*, dispose alike of the claim of jurisdiction by a State court, or a State judge, to interfere with the authority of the United States, whether that authority be exercised by a Federal officer, or be exercised by a Federal tribunal."

## SUMMARY

The Argument is summarized briefly as follows:

1. The Veterans Administration Hospital is located on land purchased by the United States before 1940 with the consent of the Legislature of Kentucky resulting in exclusive jurisdiction of the United States under Article 1, Section 8, Clause 17 of the Constitution.

2. The question of exclusive territorial jurisdiction is a distinct federal question.

3. A thirty-five day commitment statute, or a custom and usage under an otherwise valid statute, which denies notice and reasonable opportunity to appear and defend violates the due process clause of the Fourteenth Amendment.

4. Where a person is held in custody under the authority or claim and color of authority of the United States by an officer of that government, the States can have no jurisdiction.

## CONCLUSION

The plaintiff conveys his apologies to the learned Justices of this Court for the length of this petition and attempts to justify it only on the grounds that he lacks the experience and skill to present these complicated questions in fewer pages.

Respectfully submitted,

WILLIAM J. POWERS
*Plaintiff Pro Se*
664 Oakton Street
Des Plaines, Illinois

## APPENDIX "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Lexington

William J. Powers, Jr. — Plaintiff

vs. — No. 1445

Paul Slaton — Defendant

ORDER

This case is submitted upon the motion of the Defendant Paul Slaton to dismiss this action for declaratory judgment against him for failure to state a claim upon which relief can be granted, and that the motion be treated as one for summary judgment, pursuant to Rule 12b, Rules of Civil Procedure, and disposed of as provided in Rule 56.

It appears from the record that this action is only against Paul Slaton, individually, and that matters outside the pleadings are presented to and not excluded by the Court. In accordance with the provisions of Rule 12b, I am of the opinion that this motion to dismiss should be and is treated as one for summary judgment.

After examination of the record, consideration of the pleadings, affidavits, documents on file and the briefs filed by the respective parties, and being advised, the Court is of the opinion that there is no genuine issue as to any material fact which would entitle plaintiff to a declaratory judgment as against the defendant, Paul Slaton individually and that as a matter of law the Defendant Paul Slaton is entitled to a summary judgment dismissing this action.

It is therefore ordered and Adjudged by the Court that this action should be, and is ordered dismissed.

H. Church Ford

H. Church Ford Judge

A True Copy Attest
Davis T. McGarvey, Clerk
U. S. District Court
By E. L. Cooper
D. C.

March 29, 1962
Copy to:
William J. Powers, Jr.
Frank S. Ginocchio
Sam P. Strother

## APPENDIX "B"

(Filed Mar 13 1963 Carl W. Reuss, Clerk)

No. 14972

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

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WILLIAM J. POWERS, JR.,
*Plaintiff-Appellant;*
v.
PAUL SLATON,
*Defendant-Appellee.*

Appeal from the United States District Court for the Eastern District of Kentucky.

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Decided March 13, 1963.

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Before: CECIL, Chief Judge, BOYD and THORNTON, District Judges.

PER CURIAM. This is an appeal from an order of the District Court granting defendant's motion to dismiss plaintiff's action for a declaratory judgment which the District Court treated as a motion for a summary judgment pursuant to Rule 12 (b), Fed. R. Civ. P. and disposed of as provided in Rule 56, Fed. R. Civ. P. Plaintiff appeared pro se in both the court below and here. He complains that a judgment of the Fayette Circuit Court of Fayette County, Kentucky entered by that court on June 9, 1947 declaring him to be of unsound mind was null and void. He contends that defendant Paul Slaton has never had any lawful authority to act as Committee for him. He asks that defendant Paul Slaton be ordered to cease and desist from holding himself out as the lawfully appointed Committee of plaintiff. He further asks the Court to order

defendant to account to the lower court and plaintiff for all moneys received from the Treasurer of the United States in the names of plaintiff, and to surrender to plaintiff all such moneys to which the latter may be lawfully entitled (plus interest) as may reasonably be expected to have accrued from the possession of such moneys.

From the record on appeal we furnish the following facts which will provide the necessary background for making a determination of the matter here for review. They are as follows: On May 17, 1947 the petition of Dr. L. H. Mulligan was filed in the Fayette Circuit Court for the Commonwealth of Kentucky asserting that petitioner had information that William J. Powers, Jr. was a person of unsound mind, and asking that an inquest be held to pass upon the subject matter of the petition. After appointing counsel to represent Powers and two medical examiners to examine him, the Court submitted the medical findings of the examiners to a jury on the 9th day of June 1947. The jury returned a verdict that William J. Powers, Jr. was a person of unsound mind, whereupon the Court adopted the verdict of the jury and committed Powers to the United States Veterans Administration Hospital at Lexington, Kentucky. Subsequent to this finding and commitment, Marian R. Powers, as the wife of William J. Powers, Jr. filed a petition with the Fayette County Court for her appointment as his Committee, and on July 26, 1947 an order was entered appointing Powers' wife as his Committee. She continued in this capacity until August 24, 1949 when she tendered her resignation as Committee for her husband, filed her final accounting, and petitioned for the appointment of a successor Committee. The Court, acting upon this petition, entered the following order:

"IT IS ORDERED AND ADJUDGED that the Citizens Bank and Trust Company, Lexington, Kentucky, be and it is hereby appointed as Committee for

William J. Powers, Jr., and that the bond of said Committee be fixed in the amount of Three Thousand Dollars ($3000.00).

"THEREUPON appeared the Citizens Bank and Trust Company, by said Trust Officer, Paul Slaton, and executed bond in the penal sum of THREE THOUSAND DOLLARS ($3000.00) with its capital stock as surety which bond was examined and approved by the Court and the Committee having taken the oath as required under law is now empowered to perform all duties and acts as committee for William J. Powers, Jr."

From the foregoing order it is apparent that defendant Paul Slaton appeared in the proceedings for the express purpose of performing a ministerial act for his employer, the Citizens Bank and Trust Company, in relation to the appointment of the Citizens Bank and Trust Company as Committee for plaintiff. The court proceedings enumerated above clearly reflect that the defendant Paul Slaton was not personally involved in any manner with the affairs of this plaintiff—he did not petition the court for appointment; he was not designated by the court to act in any capacity; he did not hold himself out as Committee for plaintiff nor perform any other act (including the receipt of any moneys) that might render him liable to plaintiff based upon any representation by him as Committee for plaintiff. Since plaintiff's complaints regarding Slaton are without substance, it is evident that his pleadings and the exhibits attached thereto do not constitute a claim upon which relief can be granted. The granting of defendant's motion for a summary judgment was a proper determination by the District Court.

Appellant presents additional questions for review by this court involving the validity of the State Court proceedings. The courts of the Commonwealth of Kentucky afford adequate remedies to a party seeking a determination as to the validity of State Court proceedings.

The order of the District Court granting the motion for summary judgment is affirmed.

## APPENDIX "C"

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM J. POWERS, JR.,
Plaintiff-Appellant

vs. No. 14,972

PAUL SLATON,
Defendant-Appellee

MOTION UNDER RULE 8 AND RULE 22 OF THIS COURT AND RULE 6(c) of FEDERAL RULES OF CIVIL PROCEDURE FOR EXTENSION TO FILE PETITION FOR REVIEW.

The plaintiff-appellant has prepared a petition for review of the order entered by this Court on March 13, 1963 dismissing his appeal but has not been able to have it reproduced in a manner acceptable under the rules of this Court, within twenty day.

The plaintiff-appellant will rely on the following points:

1. This Court Of Appeals Failed To Find That It Had Jurisdiction To Hear The Case At All Before It Made Findings On The Merits In The Record.
2. The Federal Government Exercises Exclusive Jurisdiction Over The Lexington Veterans Administration Grounds And Buildings Under Article 1, Section 8, Clause 17 Of The Constitution Of The United States.
3. The Petition Of May 17, 1947 Did Not State The Facts Required By Kentucky Revised Statute 202.030 (1946 edition).
4. This Court Failed To Make Any Findings On The Plaintiff's Motion Appearing On Pages 24a to 31a Inclusive Of Plaintiff's Appendix.

5. The Fourteenth Amendment Was Violated When Plaintiff-Appellant Was Denied Notice And Opportunity To Appear And Defend Himself In The Circuit Court Of Fayette County.

This motion was not made for any unnecessary delay but was caused by illness of himself, his wife, and his daughter, with the flu.

MOTION

Wherefore, the plaintiff-appellant respectfully asks this Court for an extension of ten days time to prepare his petition for review for submission to this Court of Appeals.

*William J Powers Jr*
William J Powers Jr
Plaintiff-Appellant
664 Oakton Street
Des Plaines, Illinois

14,972

Office of the Clerk

UNITED STATES COURT OF APPEALS
For the Sixth Circuit
Cincinnati 2, Ohio

Carl W. Reuss
Clerk

April 5, 1963

Mr. William J. Powers, Jr.
664 Oakton Street
Des Plaines, Illinois

Re: William J. Powers, Jr.
vs Paul Slaton—No. 14,972

Dear Mr. Powers:

By direction of the Court I am returning, without filing, the copies of your motion to extend the time for filing a petition for rehearing in the above case.

Please be advised that this motion comes too late, inasmuch as the mandate was issued to the District Court at Lexington, Kentucky on April 4, 1963 and the case is closed on the docket of this court.

Be referring to Rule 22 (1) you will note that any motion for extension of time must be filed within 20 days after entry of judgment in this court. The judgment was entered on March 13, 1963.

Yours very truly
*Carl W. Reuss*
Carl W. Reuss, Clerk

CWR:HT
Encl.

14,972

Office of the Clerk
UNITED STATES COURT OF APPEALS
For the Sixth Circuit
Cincinnati 2, Ohio

Carl W. Reuss
Clerk

April 10, 1963

Mr. William J. Powers, Jr.
664 Oakton Street
Des Plaines, Illinois

Re: William J. Powers, Jr.
vs Paul Slaton—No. 14,972

Dear Mr. Powers:

I presented your letter of April 8 to the Court and am directed to advise you that the Court recognizes Rule 6(e) of the Federal Rules of Civil Procedure, but this rule has no application to the situation in your case.

Yours very truly
*Carl W. Reuss*
Carl W. Reuss, Clerk

CWR:HT
Encl.

P.S. Since writing the above letter I received the enclosed copies of motion, which I am again returning to you.

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1962

WILLIAM J. POWERS, JR.,

Petitioner,

vs.

PAUL SLATON

---

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

---

Upon Consideration of the application of petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

August 10, 1963.

S. POTTER STEWART
*Associate Justice of the Supreme Court of the United States.*

Dated this 6th
day of June 1963.

## APPENDIX "D"

HOUSE OF REPRESENTATIVE

72d Congress — Report

1st Session — No. 1267

To Authorize The Transfer of Certain Lands in Fayette County, Ky., to the Commonwealth of Kentucky

---

May 10, 1932. Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

---

Mr. Spence, from the Committee on World War Veterans' Legislation, submitted the following

REPORT

[To accompany H. R. 10825]

The Committee on World War Veterans' Legislation, to which was referred the bill (H. R. 10825) to authorize transfer of certain lands in Fayette County, Ky., to the Commonwealth of Kentucky, having considered the same, reports favorably thereon with the recommendation that the bill do pass, amended as follows:

(Land description omitted)

The amendments are made at the request of the Veterans' Administration to prevent any misinterpretation of the description of the strip of land to be granted the Commonwealth of Kentucky.

The State of Kentucky has agreed to take over from the county and maintain the Leestown Pike, which forms the north boundary line of the Veterans' Administration hospital reservation at Lexington, and provides the main entrance thereto, providing the width of this road is increased from 30 to 60 feet.

In order to accomplish this, Judge Chester D. Adams of the Fayette County Court, has requested the Federal Government to grant an additional strip of land, approximately 15 feet wide, along the north boundary line of the hospital reservation. The total amount of land required by the State is approximately 3,267 acres. Of this amount, approximately 1,391 acres are now being used in the roadway, as the present boundary line of the reservation runs along the center line of the Leestown Pike. This leaves approximately 1.876 acres of additional land required.

The Administrator of Veterans' Affairs, in his letter of May 3, 1932, has advised the committee that with the above-cited changes, favorable consideration of the passage of the bill is recommended. His letter is made a part of this report and reads as follows:

Veterans' Administration,
Washington, May 3, 1932

Hon. John E. Rankin,

*Chairman Committee on World War Veterans' Legislation, House of Representatives, Washington, D. C.*

My Dear Mr. Rankin: Receipt is acknowledged of your letter of April 22, 1932, transmitting a copy of H. R. 10825, Seventy-second Congress, asking a report in duplicate thereon and for such views as it may be desirable to communicate. The bill is entitled "A bill to authorize the transfer of certain lands in Fayette County, Ky., to the Commonwealth of Kentucky."

The bill is returned with certain changes in punctuation and capitalization suggested by pencil notations on the bill. These changes are formal in character and in no way affect the substance of the bill.

With the changes suggested this administration recommends favorable consideration of the passage of the bill.

A copy of this letter is inclosed for your use.

Very truly yours,

Frank T. Hines, *Administrator.*

## APPENDIX "E"

VETERANS ADMINISTRATION
HOSPITAL
Lexington, Kentucky
May 15, 1957

8210

Your File Reference:
In Reply to: LXH10C-1
POWERS, William J.
C-Not Assigned

Mr. George E. DeLong
Clerk, Fayette Circuit Court
Lexington, Kentucky

Dear Sir:

This is to advise that Mr. William J. Powers is eligible for hospitalization and that facilities are available for his reception at this hospital upon commitment by court of proper jurisdiction.

Very truly yours,

*S. R. Baker*
S. R. Baker, M. D.
Clinical Director

States of Kentucky )
County of Fayette )

POWERS, William J.

IN RE:
ALLEGED TO BE INCOMPETENT

This is to state that William J. Powers has been a patient at the Veterans Administration Hospital, Lexington, Kentucky, since May 4, 1947. At the present time he is considered psychotic (insane), which renders him incompetent to manage his own affairs, and requires supervision and control for his own welfare.

This statement is based on our knowledge of the condition of William J. Powers as a result of our examination and observation of him during the time he has been a patient at this hospital.

This certificate is made as a matter of providing the court of jurisdiction with information regarding his incompetency in order that his need for commitment and the appointment of a committee may be properly inquired into.

Because of the mental and physical condition of William J. Powers it is not believed that it would be advisable for him to appear in court at this time.

*C. I. Schwartz*
C. I. Schwartz, M. D.
Ward Physician.

*S. R. Baker*
S. R. Baker, M. D.
Clinical Director

Subscribed and sworn to before me this 15th day of May, 1947, at Lexington, Kentucky.

*Anne Moore (Frost)*
Notary Public, Fayette Co., Ky.
My commission expires 5-27-48

## APPENDIX "F"

FAYETTE CIRCUIT COURT

COMMONWEALTH OF KENTUCKY Plaintiff

vs. AFFIDAVIT AND ORDER

WILLIAM J. POWERS, JR. Defendant
Veterans Administration Hospital.

The Affiants L. H. Mulligan and Thomas Shannon, say, that they are practicing physicians of Fayette County, Kentucky appointed to examine the defendant; that they have made an examination of the defendant William J. Powers, Jr., against whom a lunacy proceeding has been started in the Fayette Circuit Court; that said defendant's present condition is so abnormal that the safety of the defendant requires that he be committed for a period of care and further medical examination and observation of his mental condition, it is necessary and proper that said defendant should at once be taken to the Veterans Administration Hospital at Lexington, Kentucky, for observation and treatment pending the determination of the said lunacy proceedings; that it would be dangerous for the defendant's safety and for the safety of the public for the defendant not to be at once sent to said Hospital.

*L. H. Mulligan*
*Thomas A. Shannon, M.D.*

Subscribed and sworn to before me this 17th day of May, 1947.

Geo. E. DeLong, C. F. C. C.
By: *John B DeLong* D.C.

It appearing from the foregong affidavits of Doctors L. H. Mulligan, and Thomas A. Shannon, that the defendant William J. Powers, Jr., against whom a lunacy proceeding is now pending in the Fayette Circuit Court, is in such abnormal physical and mental condition, that said defendant should at once be removed to the Veterans Administration Hospital at Lexington, Kentucky, for observation and treatment, and that it would be dangerous for said defendant and for the public for said defendant not to be sent to said Hospital immediately, it is ordered and adjudged that the Sheriff of Fayette County take the said defendant and deliver the said defendant to the said Hospital at Lexington, Kentucky, there to be held for a period of care and further medical examination, not to exceed thirty-five days or until the further order of Court pending the determination of the said insanity inquest. The Superintendent of the said Hospital is directed to hold said defendant for observation and treatment under Chapters 16, Acts 1936, until the determination of such trial, unless otherwise ordered by the Court.

*Chester D. Adams*
Judge, Fayette Circuit Court

## APPENDIX "G"

COMMONWEALTH OF KENTUCKY
ACTS OF 1936
Pages 47, 48, 49.

CHAPTER 16.

AN ACT to amend Chapter sixteen (16) of the Acts of one thousand nine hundred twenty-eight (1928) by adding after Section seventy-seven (77) thereof and before Section seventy-eight (78) thereof a new section tion to be entitled Section seventy-seven a (77a) and providing for the temporary commitment for care and observation of persons whose mental condition is so abnormal as to require their temporary commitment for care and observation pending a determination whether or not they are insane.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

If the certificate of the medical examiners mentioned in the preceding sections, instead of stating that in the opinion of such examiners the person is insane, shall state in substance that in the opinion of such examiners the mental condition of the person is so abnormal that the safety of the person or of the public requires that he be committed for a period of care and further medical examination and observation of his mental condition, upon the filing of such certificate by the court may order such person to state hospital for the insane or to a city or county hospital in the county having a psychopathic ward or facilities suitable, in the court's opinion, for the care and medical examination and observation of mental diseases, for

a period of care and further medical examination and observation of the mental condition of such person not to exceed thirty five (35) days. Within thirty (30) days after such commitment, if the superintendent of the institution to which the person has been committed shall be of the opinion that the person is sane, he shall so certify to the judge who committed him, who shall thereupon order the discharge of the person, and it shall be the duty of the clerk to mail an attested copy of such order to the superintendent of the institution to which the person was committed. Within thirty (30) days after such commitment, if the superintendent of the institution to which the person has been committed be of the opinion that the person is insane, he shall so certify to the judge who committed him, whereupon, the judge shall again appoint two medical examiners as provided in section two hundred sixteen aa-seventy six (216aa-76) Carroll's Kentucky Statutes, one thousand nine hundred thirty (1930) Edition, and upon the filing of their certificates as provided in Section two hundred sixteen aa-seventy-seven (216aa-77), Carroll's Kentucky Statutes, one thousand nine hundred thirty (1930) Edition, the action shall proceed as provided in Sections two hundred sixteen aa-sixty-eight (216aa-76) to two hundred sixteen aa-ninety-four (216aa-94) inclusive Carroll's Kentucky Statutes, one thousand nine hundred thirty (1930) Edition.

Approved February 18, 1936.

## APPENDIX "H"

VERBATIM TEXT OF RELEVANT KENTUCKY STATUTES NOT PRINTED ELSEWHERE IN THIS BRIEF. (1946 Edition)

K.R.S. 202.110 (216aa-77) CONTENTS OF PHYSICIANS' CERTIFICATE; FORM.

(1) The certificate shall state that the defendant has been examined by each of the medical examiners making the certificate within three days prior to the date of the certificate, and that in their judgment he is an idiot or is feeble-minded, epileptic or insane, if such be the fact, and that he requires supervision, control, and care for his own welfare or for the welfare of others or of the community.

(2) The certificate shall further state whether such supervision, control and care can best be provided by commitment to an institution for the feeble-minded, the epileptic or for the insane, or by commitment to guardianship.

(3) The certificate shall be in the form prescribed by the Department of Welfare and shall state the facts and circumstances upon which the judgment of the medical examiners is based; and shall be sworn to before a notary or the clerk or judge of the court.

Note: The text printed in the paragraphs below is that of Chapter 16, Acts of 1936, (Appendix "F"), as amended by Chapter 29, Acts of 1944, as amended by Chapter 178, Acts of 1946, and as found in Chapter 202 of the 1946 edition of the Kentucky Revised Statutes.

K.R.S. 202.120 (216aa-77a) PERSONS HELD FOR FURTHER EXAMINATION; THIRTY-FIVE DAY COMMITMENT; COMMITMENT TO VETERANS ADMINISTRATION; CERTIFICATION AS TO CONDITION.

(1) If the certificate of the medical examiners men-

tioned in KRS 202.110 states in substance that in the opinion of such examiners the mental condition of the person is so abnormal that the safety of the person or of the public requires that he be committed for a period of care and further medical examination and observation of his mental condition, the court may commit such person to a state hospital for the insane, or to a city or county hospital in the county having a psychopathic ward or facilities suitable, in the court's opinion, for the care and medical examination and observation of mental diseases, or, upon receipt of a certificate in writing from the United States Veterans Administration or other agency of the United States Government that facilities are available and that such person is eligible for care or treatment therein, to the said United States Veterans Administration or other agency of the United States Government, for a period of care and further medical examination and observation of the mental condition of such person not to exceed thirty-five days.

(2) Not relevant in this case.

(3) Within thirty days after such commitment, if the superintendent, and the clinical director or staff physician acting in the latter capacity, of the institution to which the person has been committed, or, in the case of a commitment to the United States Veterans Administration or other federal agency, the responsible medical officer and a staff physician of the administration or other agency, find that the person is insane (psychotic), they shall so certify to the court which committed him. Thereupon an inquest shall be held in accordance with the provisions of this chapter, and upon the trial the testimony of the physicians appointed under KRS 202.100 may be heard, and the certificate above referred to in this subsection shall also be admissible in evidence. (1944, c29, sec. 1; 1946, c178, sec. 1.)

## APPENDIX "I"

COMMONWEALTH OF KENTUCKY

Acts of 1928

Pages 110-114 inc.

§ 68. Inquest; Jurisdiction. The circuit courts of the several counties of this state shall have exclusive jurisdiction of all inquests concerning the condition of the mind or mental faculty of persons. When no circuit court is in session in the county, inquests of insane persons may be held by a judge of a circuit court or by the presiding judge of the county court, but in no case shall an inquest upon an idiot or a person convicted of crime and confined in the penitentiary or reformatory, be held except in the circuit court, and if the inquest is upon a convict it shall only be held at a regular term of said court.

§ 69. Inquest, Except Criminals; How Instituted. Any reputable person being a resident of the county and having knowledge of a person in the county, not serving a sentence in a penitentiary or reformatory under a criminal charge, who appears to be either feeble minded, an epileptic, insane person or an idiot, who is not in a state or private institution for the care of such person may file with the clerk of the circuit court a petition in writing for the trial and committal of such person and setting forth facts verified by affidavit. It shall be sufficient, if the affidavit is upon information and belief.

§ 70. Petition for Inquest; What It Shall State. The petition, verified as required in the preceding section, shall set forth the age and residence of the person concerning whom the petition is filed, the names, residence of the parents or guardians, if known, and of the husband or wife, if any, and the name and residence of the nearest relative,

custody, control and supervision of such person; or if no such person is known to the petitioner, then of some near relative or that such is unknown to the petitioner.

§ 71. Court to Appoint Attorney; Commonwealth's Attorney. In any case of inquest the court shall appoint some member of the bar to represent and protect the interests and rights of the person alleged to be of unsound mind, and it shall also be the duty of the attorney for the commonwealth to prevent the finding of any person to be of unsound mind who, in his opinion is not such.

§ 72. Notice of Inquest; Person to be Notified; Service of Summons. All persons named in the petition, including the alleged feeble-minded person, epileptic, insane person or idiot, if of legal age, shall be notified of such proceeding by a summons issued, requiring the parent or parents, guardian or other person having the custody, control or supervision of such person or with whom such person may be, to appear with such person at a time and place to be stated in the summons, which time shall not be less than three (3) days after service. The parents of such person if living, if their residence be known to the petitioner, or the legal guardian, if one there be, and his residence is known to the petitioner, or if there be neither parent or guardian whose residence is known to the petitioner, then some near relative, if his or her residence be known to the petitioner, shall be notified also of the proceedings.

§ 73. Failure of Person Summoned to Appear; When Court May Hold Inquest. If a person summoned as herein provided shall fail without reasonable cause to appear and abide by the order of the court, he may be proceeded against as in the case of contempt of court. On the return of the summons or other process, or on the appearance of such alleged feeble-minded, epileptic, insane person

or idiot with or without summons or other process in person before the court, together with the return of service of notice, if there be any person notified, or upon the personal appearance or written consent to the proceedings of the person or persons, if any be notified, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case.

§ 74. Trial by Jury, if Desired. In proceeding under this act the person alleged to be feeble-minded, epileptic or insane, and appearing before the court, of any person interested in such person, shall have the right to demand for such alleged feeble-minded, epileptic or insane person a trial by jury, which shall be granted as in other cases, unless waived; or the court on its own motion may call a jury to try such case. The court in its discretion may conduct the trial or inquest in chambers.

§ 75. Evidence; Witnesses May be Summoned. The court may in its discretion require other evidence in addition to the petition and the certificates of the examining physicians, and he may require the attendance at the hearing of said physicians and of any other witnesses. The alleged feeble-minded, epileptic, insane person or idiot or any one representing him shall have the right to summon witnesses and to present evidence as in other cases made and provided.

§ 76. Examining Physician; Qualifications; Fee Paid by County; Certificate. When a petition for the trial and commitment of an alleged feeble-minded, epileptic, idiot or insane person has been properly filed with the clerk of the court, the court shall appoint two physicians to examine such persons and to certify to the court as to their findings in the case. These physicians shall be selected where possible because they have made special study of feeble-mindedness and mental diseases and shall be entitled to a

fee of $3.00 each for such examination and certificate, to be paid by the county in which the commitment is made, upon a certified copy of an order of allowance made by the circuit court holding the inquest.

§ 77. Examination; Certificate, What It Shall State; To Be Verified. The certificate shall state that the person has been examined by each of the medical examiners making the certificate within three days prior to the date of the certificate, and that in their judgment he is an idiot or is feeble-minded, epileptic or insane in the sense of this act as the case may be, if such be the fact, and requires supervision, control and care for his own welfare or for the welfare of others or of the community; and it shall further state whether such supervision, control and care can best be provided by commitment to an institution for the feeble-minded, the epileptic or for the insane, or by commitment to guardianship. The certificate shall be in the form prescribed by the State Board of Charities and Corrections, and shall state the facts and circumstances upon which the judgment of the medical examiners is based, and shall be sworn to before a notary or the clerk or judge of the court.

§ 78. Presence of Persons Charged; When Dispensed With. No inquest shall be held unless the person charged to be an idiot, insane, feeble-minded or epileptic is in court; provided, however, that the personal presence of such person may be dispensed with when it shall appear by the oath or affidavit of two regular practicing physicians that they have personally examined such person and that they verily believe that his condition is such that it would be unsafe to bring him into court.

§ 79. Inquest; Oath to be Administered to Jury; Form of; Instructions of Court. The following oath shall be administered to the jury: "You do swear that you will

well and truly inquire, and from the evidence say, in your verdict, whether A B, the person whom you have in charge, is of unsound mind, and if of unsound mind, whether he is an idiot or lunatic—that is, whether he was destitute of mind from infancy or has lost it since birth; and if he has lost it since his birth, that you will state when, and as far as you can from the evidence the cause of it. You will also inquire and state his birth and residence, and whether he has been brought into this state by any person, and by whom, for the purpose of becoming a charge upon the Commonwealth. That you will find what estate, the value thereof, he owns in possession, reversion, or remainder; whether his parents are alive; where they reside; and whether they have estate sufficient to support the person under trial; whether he is capable of laboring in whole or in part, and what part, for his support." The judge shall instruct the jury upon the whole case, so as to enable them to decide the question whether the defendant is an idiot or lunatic.

But this oath shall not be confused with or in any wise conflict with the oath to be given upon the inquest of an imbecile as prescribed in section 2156.

§6. Pauper; Who Is; Verdict; Orders of Court. A person is a pauper, idiot, or lunatic,

## APPENDIX "J"

### SELECTED SECTIONS FROM THE BILL OF RIGHTS OF THE COMMONWEALTH OF KENTUCKY.

Section 1. *Rights of Life, Liberty, Worship, Pursuit of Safety, etc.*

"All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties."

Section 2. *Absolute and arbitrary power denied.*

"Absolute and arbitrary power over the lives, liberty and property of free men exists nowhere in a republic, not even in the largest majority."

Section 7. *Right of trial by jury.*

"The ancient mode of trial by jury shall be held sacred and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution."

Section 10. *Security from Search and Seizure.*

"The people shall be secure in their persons, houses, papers and possessions from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation."

Section 13. *Right of judicial remedy for injury, speedy trial.*

"All courts shall be open, and every person for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

Section 16. *Right to bail; habeas corpus.*

"* * * and the privilege of the writ of habeas corpus shall not be suspended unless when, in the case of rebellion or invasion, the public safety may require it."

Section 26. *General powers subordinate to Bill of Rights. Laws contrary thereto are void.*

"To guard against transgressions of the high powers we have delegated, we declare that everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void."

## APPENDIX "K"

COMMONWEALTH OF KENTUCKY
ACTS OF 1944

PAGE 388
CHAPTER 173
(H. B. 389)

AN ACT to perfect the Kentucky Revised Statutes by repealing certain provisions that have been impliedly repealed or have become obsolete, or have been held unconstitutional by the Court of Appeals, correcting erroneous transposition of words and figures, correcting inadvertent changes of language, and restoring provisions of former statutes that were omitted under a misapprehension or by inadvertence.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

§ 1. Section 3,010 of the Kentucky Revised Statutes is amended to read as follows:

The Commonwealth of Kentucky consents to the acquisition by the United States of all lands and appurtenances in this state heretofore legally acquired, or that may be hereafter legally acquired by purchase, or by condemnation, for the erection of forts, magazines, arsenals, dock yards, post offices, custom houses, courthouses and other needful buildings, and for locks, dams and canals in improving the navigation of the rivers and waters within and on the borders of Kentucky.

## APPENDIX "L"

STATE OF KENTUCKY, COUNTY OF FAYETTE
AUGUST TERM, 1949
AUGUST 24th, 1949

IN THE MATTER OF THE COMMITTEESHIP
OF WILLIAM J. POWERS, JR., Incompetent

PETITION FOR APPOINTMENT OF COMMITTEE

Comes the Petitioner, Marian R. Powers, and states that she is a resident of Jefferson County, Kentucky and resides at 140 Southland Drive, Louisville, Kentucky; that she is the husband of William J. Powers, Jr., incompetent.

Your Petitioner further states that William J. Powers, Jr., is a resident of Cook County, Chicago, Illinois; that he is entitled to receive Officers' Retirement Pay from the Veterans Administration in the amount of $157.50 per month.

Your Petitioner further states that she was appointed and qualified as committee for William J. Powers, Jr., by the Fayette County Court, Lexington, Kentucky on July 26, 1947; that she has filed her final settlement and tendered her resignation as such committee; that she has on hand at the present time an estate consisting of $431.67, cash, on deposit in the Central Trust Company, Owensboro, Kentucky, and U. S. Government Bonds in the amount of $618.75 (cost); that the appointment of a successor is a condition precedent to the payment of retirement benefits, referred to herein.

Wherefore, your Petitioner Prays the court to appoint a committee for William J. Powers, Jr. and that said committee be required to qualify by executing bond in the penal sum of $3,000.00.

Marian R. Powers
Petitioner

STATE OF KENTUCKY, COUNTY OF FAYETTE

Marian R. Powers, being first duly sworn says that she is the petitioner named in the foregoing petition; that she has read the statements contained therein and, that they are true as she verily believes.

Marian R. Powers, Petitioner

Subscribed and sworn to before me this 19th day of August, 1949.

Robert E. Puryear
Authority Veterans Administration

Office Supreme Court, U.S.
FILED
OCT 14 1963
JOHN F. DAVIS, CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 351

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WILLIAM J. POWERS, JR., Petitioner,

*versus*

PAUL SLATON, Respondent.

---

## RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

---

WILLIAM L. WALLACE,
SCOTT REED,
404 First National Bank Building,
Lexington, Kentucky,
*Attorneys for Respondent.*

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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IN THE

# Supreme Court of the United States

October Term, 1963

No. 351

---

WILLIAM J. POWERS, JR., *Petitioner,*

*v.*

PAUL SLATON, *Respondent.*

---

## RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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By way of preface to our argument in response to the petition herein of the petitioner, we think we should apprise the Court of some facts with respect to the record as brought to this Court by the petitioner and which record is to be considered in determining whether or not a writ of certiorari should be issued in this case.

The petitioner has filed as we find with the Clerk of this Court what purports to be "Transcript of Record" which does not appear to be certified by the Clerk of the lower Court and which is printed or typewritten on long sheets of paper which do not comply with the rules of this Court with respect to records to be filed therein. Also, it appears that only a portion

of the first grammatical paragraph of "Notice, Affidavit and Motions" filed by the respondent in the lower Court and not the full contents of said "Notice, Affidavit and Motions" has been filed or embodied in last above mentioned "Transcript of Record." It does appear, however, that in this last above mentioned "Transcript of Record" there has been incorporated immediately after said partial paragraph in said "Notice, Affidavit and Motions," (1) copy of the petition of L. H. Mulligan for an inquest to be held as to the sanity of William J. Powers, Jr., the petitioner herein, (2) appointment of two physicians to examine said Powers and report of their examination, (3) the hearing by a jury and the return of its verdict declaring the defendant to be of unsound mind and a lunatic and (4) the judgment of the Court adjudging said Powers to be a person of unsound mind and a lunatic and he be committed to the United States Veterans Administration Hospital.

We do not know why the petitioner herein omitted the other portions of the "Notice, Affidavit and Motions" filed by the respondent, Paul Slaton, in the District Court and which were included in the record in the Circuit Court of Appeals. However, we do find that there has been filed with the Clerk of this Court by the petitioner certified copies of petitioner's (appellant's in the lower Court) appendix and the respondent's (appellee's in the lower Court) appendix duly certified by the Clerk of the Circuit Court of Appeals as the record in this Court on which the petitioner bases his petition for a writ of certiorari.

Under the state of the record as brought here by the petitioner, we presume that we may be permitted in our argument to refer to any parts of any of the above documents, including the uncertified "Transcript of Record" as well as the certified portions of the record. And when we refer to the uncertified portion of the record as hereinabove described, we shall refer to it as "Transcript of Record" with quotation marks around the words "Transcript of Record" as here noted. When we refer to the part of the record which has been actually certified, we shall refer to same simply as "Certified Transcript of Record."

The documents which are military records and are filed in said "Transcript of Record" for the most part and, except as may hereinafter be pointed out, support the "Statement of the Case" as set out in the petition of the petitioner on pages 4 and 5 thereof, but are immaterial in this proceeding.

## I.

## ARGUMENT.

Rule 19 of the Supreme Court provides at "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor."

While neither controlling nor fully measuring this Court's discretion, there are set out in said Rule certain things which indicate the character of reasons which may be considered by this Court in determining

whether or not it will grant a writ of certiorari, which are as follows:

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> "(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

In this case the State Court did not decide any federal question of substance, nor did the State Court decide any federal question in a way probably not in accord with applicable decisions of this Court.

Likewise, the Court of Appeals in this case did not render a decision in conflict with any decision of any other court of appeals on the same matter. Also, the Court of Appeals did not, in this case, decide any important state or territorial question in a way in conflict with applicable state or territorial law. Also, it did not decide any important question of federal law

which has not been, but should be, settled by this Court. Also, it did not decide a federal question in a way in conflict with applicable decisions of this Court. Also, the Court of Appeals has not in its decision in any wise departed from the accepted and usual course of judicial proceedings. Nor has it so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

We, therefore, submit that there are no special or important reasons for this Court to grant a writ of certiorari when subsections (a) and (b) of Rule 19 of the Supreme Court Rules are taken into consideration.

In the lower Court the respondent requested that his motion to dismiss ("Certified Transcript of Record," petitioner's App., pages 9a-11a, inclusive—see also affidavit of respondent, Paul Slaton, in support of said motion, "Certified Transcript of Record," petitioner's App., pages 12a-14a, inclusive) for failure to state a claim be treated as a motion for summary judgment under Rules 12(b) and 56 of FRCP, which motion was sustained and the cause was submitted for summary judgment.

The petitioner's complaint is found in "Transcript of Record," pages 2-7, inclusive, and pages 1a-8a, inclusive, in "Certified Transcript of Record."

In support of said motion for summary judgment, the respondent's argument in his brief in the lower Court was as follows:

> "The complaint, as a whole, is confined against the defendant, Paul Slaton, individually; it contains two counts, and is so interspersed with

breaches, implications and conclusions that an analysis of its factual averments is rendered difficult. It would have been more helpful had the averments been made, in accordance with Rule 8, simple, concise and direct. Aside from the averments made as to diversity and amount involved, paragraphs 5 and 6 of Count I are more comprehensible than the remaining paragraphs.

"In paragraph 5 of Count I, the complaint alleges that since September 1949, to the present day, the defendant, Paul Slaton, has 'held *himself* out as the lawfully appointed committe of plaintiff.' And in paragraph 6 of Count I, the complaint alleges that the defendant, 'Paul Slaton, persisted 'in holding *himself* out' to the Army Finance Center as having been lawfully appointed to represent the plaintiff by committee, and as a result received a sum of money from the U. S. Treasurer in excess of $19,000.00 belonging to plaintiff as retired army officer's pay, and that defendant refused, and continues to refuse to surrender said money to plaintiff even though plaintiff has demanded such surrender.

"A gap occurs at this point in the complaint. It is nowhere averred that the alleged appointment of defendant, Paul Slaton, as committee for plaintiff was made by an order or judgment of the Fayette County Court, or any other court. *No specific judgment of the Fayette County Court is mentioned, referred to or attacked.* Notwithstanding that fact, in paragraph 4 of the prayer of the complaint the defendant asks this Court:

"To further declare that the alleged judgment and order of the County Court of Fayette

County, Kentucky, appointing the defendant as committee for plaintiff, was and is null and void ab initio, and to no force and effect.'

"Although the complaint is absolutely silent as to the 'alleged judgment and order of Fayette County appointing defendant as committee,' and contains no averments that such a judgment was ever actually entered by that court, the complaint proceeds to aver that such judgment was null and void '*if*' it was ever entered.

"Paragraphs 8, 9, 12 and 13 of Count I plead that '*if*' the defendant was appointed by order of any court, such appointment would have to be made by the Fayette County Court at Lexington, Kentucky. But no facts are stated why plaintiff concluded that such appointment had to be made in Fayette County, Kentucky. Undoubtedly, if the alleged appointment was made in Fayette County, Kentucky, it would have to be made by judgment or order of the Fayette County Court because KRS 25.110, cited by plaintiff, would give the Fayette County Court exclusive jurisdiction to make appointment of committees and successor committees in Fayette County, Kentucky. But the plaintiff does not allege in the body of his complaint that defendant was appointed as committee by any judgment or order of the Fayette County Court. It is further averred in said paragraphs of Count I that '*IF*' the Fayette County Court had entered an order appointing defendant as committee for plaintiff, that court had no jurisdiction to make the appointment by virtue of KRS 387.025, 387.210 and 387.220 relating to requests and applications for appointment of committees of persons adjudged to be of unsound

> mind, because, plaintiff alleges in paragraphs 1, 2 and 3 of Count I that he was at the time of any such alleged order not a resident of Fayette County or of the State of Kentucky but was physically absent therefrom, and was domiciled and a resident of the State of Illinois."

In Rule 56(c) of FRCP, relating to summary judgments, it is stated:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

No depositions were filed. No judgment or order is alleged or shown by plaintiff under which defendant was ever appointed as committee of plaintiff. Furthermore, the aforesaid "*IF*" allegations made by plaintiff, by implication, admit that the defendant was never appointed as such committee and are nothing more than hypothetical statements of a case which does not in fact exist. The defendant, as shown by the order of the Fayette County Court ("Certified Transcript of Record," respondent's-appellee's App., pages 19b-20b, inclusive), was not appointed committee for plaintiff and has not at any time held himself out or acted as any such committee and has not at any time received any funds or property from any source in his individual capacity for the use or benefit of, or belonging to, the plaintiff ("Certified Transcript of Record," petitioner's-appellant's App., pages 12a-14a, inclusive).

The petitioner's wife was the original petitioner for the appointment of a committee for the petitioner herein ("Certified Transcript of Record," page 13b, being respondent's App., page 13b in Circuit Court of Appeals) and she was duly appointed and qualified as such committee for petitioner herein ("Certified Transcript of Record," pages 15b-16b, inclusive, being said pages of App. to appellee's brief in Circuit Court of Appeals). Upon her resignation as such committee, and submission of her final settlement as such, she petitioned for the appointment of a successor committee ("Certified Transcript of Record," pages 16b-18b, inclusive, being those pages in the App. of appellee's brief in Circuit Court of Appeals).

The County Court thereupon appointed Citizens Bank and Trust Company, the name of which has been changed to the Citizens Union National Bank and Trust Company, as a successor committee to the wife of the petitioner herein. Whereupon, said Bank and Trust Company was duly qualified ("Certified Transcript of Record," pages 18b-20b, inclusive, being said pages in the App. of appellee's brief in Circuit Court of Appeals). This the County Court had a right to do under KRS 387.090 which provides that:

> "*When it appears proper, the Court may permit him (referring to guardian) to resign his trust of he first settles his accounts and delivers over the estate as by the Court directed. In either case, or when from any cause there is a vacancy in the office of guardian, the Court may appoint a guardian.*" (Italics and parentheses ours)

It will be seen that the respondent was never at any time appointed committee and did not petition that he be appointed. In fact, he was in no way involved or connected with any of the lunacy proceedings and nothing done therein could be attributed to him. (Affidavit of respondent, Paul Slaton, in support of motion for summary judgment filed in Appendix "A" of this brief of the respondent). Neither was the appointment of said Bank as committee brought about by any act of his. He as an individual has received no money of the petitioner and has never at any time as an individual held any money from the petitioner herein. Nor has anything been shown in the record in this cause manifesting any negligence whatsoever on the part of the respondent herein.

In fact the petitioner, in his brief on page 21 thereof, claims that the "fault in this case was the negligence of the office of the Adjutant-General of the Army" and that that office had the duty of returning the petitioner to the state of his legal residence in Illinois and his home in Chicago upon his relief from active duty in the Army.

Also, the petitioner states on that same page in his brief that "the Manager of the Veterans Hospital compounded the negligence of the Adjutant-General's office by not independently determining the legal residence of the plaintiff and by confining the plaintiff in the hospital without legal authority."

Therefore, we submit that in view of the allegations of the petitioner's complaint and the matters outside said pleading which were presented to and

not excluded by the Court, it has been shown that the complaint did not, in fact, state a claim against the respondent herein upon which relief could be granted; that the motion to dismiss was properly treated as one for summary judgment and disposed of as provided in Rules 12(b) and 56 of FRCP, independent of any federal question or constitutional provisions; that there was no genuine issue as to any material fact which would entitle petitioner to a declaratory judgment against the respondent, individually; that the latter was properly adjudged to be entitled to a summary judgment dismissing petitioner's action.

## II.

## THE STATE COURT HAD JURISDICTION OVER THE UNITED STATES VETERANS ADMINISTRATION HOSPITAL IN KENTUCKY WITH RESPECT TO LUNACY PROCEEDINGS AGAINST AN INMATE IN SAID HOSPITAL.

The lunacy proceedings herein dealt with were held in accordance with provisions of the Uniform Veterans' Guardianship Act which was adopted by the Kentucky Legislature and which is Chapter 388 of Kentucky Revised Statutes.

As stated in 56 Am. Jur., Veterans and Veterans' Acts, in the 1963 Supplement thereof, at page 16, it is stated:

> "The Uniform Veterans' Guardianship Act, either in its original or amended form, has been adopted by a number of states. Other states have adopted some, but not all, of the provisions

of the original or revised act. This legislation does not cover completely the law of guardian and ward as applied to beneficiaries of the Veterans' Administration, but is intended to supplement the general laws with respect to a few special problems and to eliminate a few evils which are common in handling a ward's estate under general state laws. Another purpose of the act is to provide a simple method of securing the appointment of a guardian without the notoriety and the practical difficulties which often attend the appointment of a guardian under the general laws.

"The constitutionality of the Act has been upheld as against the contentions that it is unconstitutional special legislation and permits the status of a person to be fixed without due process of law.

"The act contains provisions intended to secure a liberal and uniform construction."

It is provided in that Act, KRS 388.360, that:

"This Act shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Veterans administration."

In said Act, KRS 388.380 it is provided:

"All laws or parts of laws relating to beneficiaries of the Veterans Administration inconsistent with this Act are hereby repealed. Except where inconsistent with this Act, the general guardianship laws of this State and the laws establishing the practice in such matters including rights of appeal, shall be applicable to such beneficiaries and their estate."

In said Act, KRS 388.250 it is further provided:

"Notwithstanding the provisions of existing law for adjudication of incompetency and appointment of a committee upon the inquest of a jury, where a petition is filed for the appointment of a committee for a mentally incompetent beneficiary of the Veterans Administration under the provisions of this Act, *who is found within this state, whether or not a resident thereof,* a certificate of the Administrator of Veterans Affairs or his duly authorized representative, accompanying such petition setting forth the fact that such beneficiary has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing such Veterans Administration, and that the appointment of a committee is a condition precedent to the payment of any moneys due each beneficiary by the Veterans Administration, *shall be prima facie evidence of the necessity for such appointment.* Provided, however, that some member of the bar shall be appointed by the Court to represent and protect the interests and rights of such incompetent beneficiary as provided under existing law, and further that the right of any such incompetent beneficiary or any person interested in such beneficiary to demand a trial by jury shall not be denied." (Italics ours.)

As stated in 54 Am. Jur., Section 88, page 602:

"With growing frequency the Federal government leaves largely unimpaired the civil and criminal authority of the state over national reservations or properties. *The desirability of*

*permitting the state to retain jurisdiction for local purposes involving no interference with performance of governmental duties is becoming more and more evident as the activities of the government expand; the United States should not be compelled to exercise exclusive jurisdiction over all property it acquires.*" (Italics ours.)

The lunacy proceedings of which petitioner complains in no wise involved any interference with the performance of governmental duties with respect to veterans. The states which have adopted the Uniform Act have therein enacted special provisions concerning veterans and several states have amended certain provisions of the Uniform Act. This Act does not completely cover the law of guardian and ward with respect to beneficiaries of the Veterans Administration, but is intended to supplement the general laws of this state with respect to a few special problems "and to eliminate a few evils which are common in handling a ward's estate under general state laws" (173 ALR. Anno. page 1064).

"It is now settled that the jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occu-

pants of the territory transferred. This assures that no area however small will be left without a 100, 84 L. Ed. 596-600)."

developed legal system for private rights" (James Stewart & Company v. Sadrakula, 309 U. S. 99,

Also in Hines v. Stein, 298 U. S. 94, 98, this Court states:

> "During many years, Congress has recognized the propriety, if not the necessity, of entrusting the custody and management of funds belonging to incompetent pensioners to fiduciaries appointed by state courts, without seeking to limit judicial powers in respect to them."

The Uniform Veterans' Guardianship Act was enacted by the Kentucky Legislature in 1942 and became effective June 1, 1942. The consent of the Commonwealth of Kentucky to the acquisition by the United States of all lands and appurtenances for certain purposes, including "other needful buildings," in that state theretofore legally acquired was not given until the enactment of KRS Section 3.010 in 1944 as shown by Appendix "K" of petitioner's petition herein. Therefore, under this Court's holding in the Sadrakula case, the state retains its jurisdiction over the Veterans Administration property and Powers, an occupant of that territory, so long as it did not interfere with the purposes of the United States respecting its administration of the affairs of veterans. This it evidently did not do as it was at the instance of the Veterans Administration that the lunacy proceedings

were initiated and prosecuted to conclusion as shown by the affidavits of Dr. Schwartz, Ward Physician, and Dr. S. R. Baker, Clinical Director, of the Veterans Administration Hospital, Lexington, Kentucky ("Certified Transcript of Record," 2b).

> "The Veterans' Administration is an independent establishment in the executive branch of the Government, especially created for or concerned in the administration of laws relating to the relief and other benefits provided by law for veterans, their dependents, and their beneficiaries" (38 U. S. C. A., page 69, Section 201).

The Administrator of Veterans Affairs is the head of the Veterans Administration and as such head has the following broad powers:

> "Except to the extent inconsistent with law, he may consolidate, *eliminate*, abolish, or redistribute the *functions* of the bureaus, agencies, offices, or activities in the Veterans' Administration, *create* new bureaus, *agencies*, offices, or *activities* therein, *and fix the functions thereof and the duties and powers of their respective executive heads.*" (Italics ours.)

The Administrator's office is empowered to make regulations, necessary or appropriate, to carry out the laws administered by the Veterans Administration such as are consistent therewith, including regulations with respect to "*the methods of making investigations and medical examinations, and the manner and form of adjudications and awards*" (38 U. S. C. A., page 71, Section 210, Subsection (b), and (c)). (Italics ours.)

It must be presumed that aforesaid Ward Physician and Clinical Director who initiated the lunacy proceedings were acting under the authority of the Administrator of Veterans Affairs as executive heads or representatives of the Government when they gave their affidavits to provide the state Court with jurisdiction to secure information regarding the competency or incompetency and the necessity for the commitment of power and the appointment of a committee for him.

These affidavits, in fact, described the form of adjudications which the Government desired with respect to the mental condition of the petitioner herein. Therefore, it would follow that if there had ever been any ceding of jurisdiction in this matter by the State to the Federal Government, the Federal Government through the executive agency of the Administrator of Veterans Affairs re-ceded its jurisdiction to the State.

We know of no authority which would justify the view that Congress intended to deprive the state Courts of such jurisdiction as has been exercised by the state Courts in this cause.

Furthermore, it has been the general custom and usage for lunacy proceedings to be initiated and instituted and held as was done in this case with respect to inmates of the Veterans Hospital, Lexington, Kentucky, ever since that hospital was established until the present time during which period there have been hundreds of such lunacy proceedings held as was this one in the Fayette Circuit Court at Lexington, Kentucky, with respect to such inmates; and this is the first time to the knowledge of these defendants that

any questions such as raised in this action have been raised relative thereto. We challenge the petitioner to disprove this statement.

It also should be noted with respect to this question to jurisdiction that it is provided in KRS Section 3.010 as follows:

> "The Commonwealth of Kentucky consents to the acquisition by the United States of all lands and appurtenances in this state, by condemnation, gift or purchase, which are needful to their constitutional purposes, *but said acquisition shall not be deemed to result in a cession of jurisdiction by this Commonwealth.* (1954 c. 217, Sec. 1, Eff. 6-17-54. 1944 c. 173, Sec. 1.)" (Italics ours.)

## III.

## THE PETITIONER WAS IN FACT SERVED WITH PROCESS AS PROVIDED BY KRS, SECTION 202.060.

After the institution of this present action on the 17th day of July, 1961, against Paul Slaton, as the lone defendant, in the Court below, the petitioner herein on June 7, 1962, filed his second Civil Action No. 1479 in the United States Court for the Eastern District of Kentucky against Paul Slaton, the respondent herein, and also against the Citizens Union National Bank and Trust Company, individually, and as committee de son tort, and all of the Directors of said Bank.

Mr. Powers's petition in the second action made practically the same allegations as made in his peti-

tion in this present action in which he sued only Paul Slaton, except that he made the allegations against not only Paul Slaton, but also against said Bank and all of its Directors. His prayer in the said second action was (1) that he be granted a jury trial, (2) that the Bank be required to surrender to him moneys which they had received as committee for him, together with Six (6%) Per Cent interest thereon for the length of time they have kept such moneys in their possession, (3) that the defendants be enjoined from representing to any one that they have ever performed any service of value to the plaintiff or acted as his agent, (4) that he be awarded $250,000.00 for damage and harm caused to him by the defendants generally and the gross negligence of the Directors of the Bank in particular, and (5) that he be granted such other and further relief as may be proper according to the customs and usages of law. (See App. "B" of this response).

The petitioner herein undoubtedly knows that he was actually given notice of the inquest to determine his mental condition and was actually duly summoned as required by KRS 202.060 as is shown by Appendix "C" of this response, which is a certification by the Clerk of the United States District Court for the Eastern District of Kentucky of the summons to William J. Powers and Manager, F. M. Cook, M. D., of the said Veterans Administration Hospital issued on June 5, 1947, and served by the sheriff of Fayette County, Kentucky, on William J. Powers June 6, 1947, in the United States Veterans Hospital and served also on June 6, 1947, on Dr. F. M. Cook, M. D., Manager of

said Veterans Hospital, the latter being the person having charge of said Powers. This document was, as shown by said certification, filed as Exhibit No. 3 with the deposition of Katherine M. Laden in the above mentioned case, No. 1479 by Powers, plaintiff, against Paul Slaton, the aforesaid Bank and its Directors.

The complaint of the petitioner with respect to his commitment for a thirty-five day period, to which he refers in his brief on page 26 thereof, is entirely irrelevant and has no place in this cause, as, at the time of the initiation and institution of the lunacy proceedings and the service of summons on him and the person having him in charge as hereinabove shown, the petitioner was already in the custody of the Veterans Administration and confined in the aforesaid Veterans Hospital. Therefore, there was no reason for any commitment of him by any state authority as he had already been committed to said hospital under the authority of and by the agents of the Federal Government.

Therefore, we submit that no rights of the petitioner have been violated under the due process clauses or any other provisions of the Fifth Amendment or Fourteenth Amendment of the Constitution of the United States, or under any of the provisions of Article IV, Section 2 or the Fouth Amendment of the Constitution of the United States or of any sections as designated by the petitioner of the Bill of Rights of the Constitution of the Commonwealth of Kentucky.

In the case of Chaloner v. Sherman, 242 U. S. 455, the facts in which appear to be identical with the facts

of our present case as relate to notice to Powers and the lunacy proceedings in which he was adjudged an incompetent in this cause, Justice Brandeis, in the opinion of this Court as to plaintiff's adjudication as an incompetent, stated as follows:

> As the plaintiff had notice and opportunity to be heard at each stage of these proceedings, the essential elements of due process of law were fully met, and the court had jurisdiction to enter that order. It is not open to collateral attack, although plaintiff was then under commitment at Bloomingdale." See also Simon v. Craft, 182 U. S. 427; 45 L. Ed. 1165.

## IV.

## CONCLUSION.

It may be of interest to the Court to know that the above mentioned case of William J. Powers, Jr. v. Citizens Union National Bank and Trust Company and all of its Directors and against the respondent, Paul Slaton, Civil Action No. 1479 in the United States District Court for the Eastern District of Kentucky was decided against the petitioner herein in the opinion of last mentioned Court rendered on September 25, 1963, in which, as hereinabove stated, virtually all of the allegations were made against the defendants in that case as made by the petitioner herein in this present cause. This statement of fact we are sure the petitioner will not deny as he is thoroughly familiar with the records in that case.

As stated by the United States Court of Appeals for the Sixth Circuit in its opinion in this case "the courts of the Commonwealth of Kentucky afford adequate remedies to a party seeking a determination as to the validity of State Court proceedings." We therefore submit that the writ of certiorari sought by the petitioner should not be granted and that his petition should be dismissed.

Respectfully submitted,

WILLIAM L. WALLACE,
SCOTT REED,
404 First National Bank Building,
Lexington, Kentucky,
*Attorneys for Respondent.*

## APPENDIX "A"

# UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF KENTUCKY
AT LEXINGTON

Civil Action No. 1445.

William J. Powers, Jr., Plaintiff,

v.

Paul Slaton, Defendant.

**NOTICE, AFFIDAVITS & MOTIONS:**

**(1) To dismiss for lack of jurisdiction;**

**(2) To dismiss for failure to state a claim;**

**(3) To dismiss for failure of plaintiff to join indispensable parties, or, in the alternative for an order requiring certain parties to be brought in as indispensable parties.**

Filed August 7, 1961.

I. Defendant, Paul Slaton, moves the Court to dismiss the complaint herein against him because this Court lacks jurisdiction over the subject matter thereof in that the Fayette County Court at Lexington, Kentucky, has assumed and is exercising jurisdiction over the administration of the estate of plaintiff, William J. Powers, Jr., in the hands of the Committee for said plaintiff appointed and qualified in said Court, and has, and is exercising jurisdiction and control over said Committee, as more fully appears in the affidavit of this defendant and exhibits annexed thereto, which are filed herewith and made a part hereof.

II. Defendant moves the Court to dismiss this action against him because the complaint fails to state a claim against this defendant upon which relief can be granted in that: (1) It appears on the face of the complaint that the claim of plaintiff, if any, is against Citizens Union National Bank & Trust Company of Lexington, Kentucky, as Committee for the plaintiff, and not against this defendant, individually, and (2) in that the complaint does not state an actual justiciable controversy between plaintiff and this defendant, as more fully appears from the affidavit of defendant and exhibits annexed thereto, which are attached to this motion and are made a part hereof.

III. Defendant moves the Court to dismiss this action because of the failure of plaintiff to make parties to this action the following, who are each indispensable parties, as more fully appears in the affidavit of this defendant hereto attached and made a part hereof, to-wit:

(a) Citizens Union National Bank & Trust Company of Lexington, Kentucky, an association organized under the National Banking laws of the United States of America (formerly Citizens Union Bank & Trust Company of Lexington, Kentucky), Committee for plaintiff, William J. Powers, Jr.

(b) The United States Veterans Bureau.

(c) The United States Department of the Army,

or, in the alternative, for an order making said Citizens Union National Bank & Trust Company of Lexington, Kentucky, Committee for William J. Powers, Jr., and the United States Veterans Bureau, and the United States Department of the Army, and each of them, parties to this action; directing that process be issued and served upon them and each of them, as provided by law, and requiring plaintiff to serve and file an amended complaint against said added defendants.

IV. The defendant moves the Court to extend the time within which he may answer, or otherwise move with respect to the complaint herein, for a reasonable time to be fixed by the Court after the foregoing motions have been ruled upon.

Defendant files herewith his affidavit and exhibits A, B and C attached thereto, and makes the same a part hereof in support of the foregoing motions.

(s) Frank S. Ginocchio,
701 Bank of Commerce Bldg.,
Lexington, Ky., Phone 2-7424.

(s). Sam P. Strother,
Citizens Union National Bank
& Trust Co. Bldg.,
Lexington, Ky., Phone 5-4887.

## AFFIDAVIT OF DEFENDANT IN SUPPORT OF MOTIONS.

The affiant, Paul Slaton, defendant, in the above styled action, being first duly sworn, states as follows:

(1) The affiant is named in the caption, and was summoned in the above styled action No. 1445, in his individual capacity.

(2) Affiant, individually, is not, and never was, and never claimed to be the Committee for the plaintiff, William J. Powers, Jr.

(3) Affiant does not have in his hands, and never did have, or receive any funds, or property from any source, in his individual capacity, for the use or benefit of, or belonging to the plaintiff, William J. Powers, Jr.

(4) On the 9th day of August, 1947, the Fayette Circuit Court at Lexington, Kentucky, upon inquest by a jury, duly entered a judgment, which has never been set aside, adjudging the plaintiff, William J. Powers, Jr., to be a resident of Lexington, Kentucky, and to be a person of unsound mind, and committing him to the United States

Veterans Administration Hospital, and a certified copy of said judgment is filed herewith as part hereof marked Exhibit A.

(5) On the 26th day of July, 1947, the Fayette County Court at Lexington, Kentucky, duly entered an order upon said judgment of inquest, appointing and qualifying Marian R. Powers, wife of Plaintiff, to be the Committee for said plaintiff, and qualified her as such, and a certified copy of said order is filed herewith as part hereof marked Exhibit B.

(6) On the 24th day of August, 1949, said Fayette County Court duly entered an order appointing and qualifying Citizens Bank & Trust Company of Lexington, Kentucky (now one and the same as Citizens Union National Bank & Trust Company of Lexington, Kentucky), as successor Committee for Plaintiff, William J. Powers, Jr., in the place and stead of said Marian R. Powers, who had resigned as Committee, and a certified copy of said order, which has not been revoked, and is still in force and effect, is filed herewith as part hereof marked Exhibit C.

(7) On October 14, 1950, said Fayette County Court duly entered an order in its Order Book 70, page 133, as appears of record therein, increasing the bond of said Citizens Bank & Trust Company as the aforesaid Committee, from $3,000.00 to $15,000.00, and said increased bond was executed by said bank and trust company accordingly.

(8) Citizens Union National Bank & Trust Company of Lexington, Kentucky, at all times since August 24, 1949, and now, is the duly appointed, qualified and acting Committee for the plaintiff, William J. Powers, Jr.

(9) Affiant is Trust Officer for said Citizens Union National Bank & Trust Company, Committee for plaintiff, but is not conducting and never has conducted the business of said bank and trust company as such Committee in his individual capacity.

(10) Citizens Union National Bank & Trust Company as Committee for plaintiff has in its hands certain investments ($13,500.00 carrying value), and a small amount of uninvested cash ($186.15), all of which were acquired from the proceeds of payments made by the United States Veterans Bureau, and the United States Department of the Army, through the Treasurer of the United States of America, in reliance and based upon the aforesaid judgment of the Fayette Circuit Court adjudging plaintiff to be a person of unsound mind, and the aforesaid orders of the Fayette County Court appointing plaintiff's wife, Marian R. Powers, as plaintiff's Committee, and said Citizens National Band & Trust Company as Successor Committee for plaintiff, being valid and legal and as a condition for making such payments.

(11) Said Citizens Union National Bank & Trust Company as Committee for plaintiff has made, and filed in the Fayette County Court periodical statements and settlements of its accounts, as required by law, from time to time since the date of its appointment and qualification as successor committee, which were submitted and subjected to the inspection and approval of the United States Veterans Bureau, and were approved and confirmed by said Court, and the Fayette County Court has exercised, and is now continuing to exercise jurisdiction and control over the investments and funds in the hands of said Citizens Union National Bank & Trust Company, Committee for said plaintiff, and over the acts and conduct of said bank as such Committee in the administration thereof.

(s) Paul Slaton.

Subscribed and sworn to before me by the defendant, Paul Slaton, this 7th day of August, 1961.

My commission expires: Oct. 24, 1961.

(s) Mamie Sanders,
Notary Public, Fayette County, Ky.

United States of America )
Eastern District of Kentucky ) ss:

I, Davis T. McGarvey, Clerk of the United States District Court for the Eastern District of Kentucky, do hereby certify that the annexed and foregoing is a true and full copy of the original Notice, Affidavit & Motions, filed August 7, 1961 in the case of William J. Powers, Jr., Plaintiff, vs. Paul Slaton, No. 1445 on the Lexington Docket now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Lexington, Ky., this 29th day of September, A. D. 1963.

Davis T. McGarvey, Clerk,
By (s) Wavelyne H. Smith,
Deputy Clerk.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit

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I, Carl W. Reuss, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of Notice, Affidavit and Motions, filed August 7, 1961, which were included in the record on appeal, filed May 7, 1962 in the case of William J. Powers, Jr. vs. Paul Slaton, No. 14,972, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 25th day of September, A. D. 1963.

(s) Carl W. Reuss,
Clerk of the United States Circuit
Court of Appeals for the Sixth
Circuit.

(Seal)

## APPENDIX "B"

IN THE

# UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON

Civil No. 1479

William J. Powers, Jr., Plaintiff,

v.

Citizens Union National Bank and Trust Company, individually and as committee de son tort, and

J. H. King; A. G. Mainous; J. W. Bratcher; D. J. Burke; S. H. Roberts; O. A. Bakhaus; Zellner Peal; S. P. Strother; J. A. Fraser; E. S. Clarke; S. D. Coke; W. M. Dunn; F. L. McCarthy; C. C. Patrick, Jr.; Harold Redd; H. C. Robinson; C. L. Thompson, Jr.; W. L. Wallace; Leslie Combs, II; each individually and each as a director of the Citizens Union National Bank and Trust Company, and

Paul Slaton, a trust officer of the Citizens Union National Bank and Trust Company, Defendants.

**COMPLAINT**—Filed June 7, 1962.

JURISDICTIONAL ALLEGATIONS.

1. Jurisdiction of this Court is invoked under 28 U.S.C. 1332 because diversity of citizenship exists between the plaintiff, who is now and was at all times during the times and actions complained of hereinafter, a citi-

zen of Illinois; and the defendants who were and are citizens of the Commonwealth of Kentucky.

2. Authority for a declaratory judgment is provided by 28 U.S.C. 2201, 2202.

3. The amount in controversy exceeds Ten Thousand Dollars ($10,000) exclusive of interests and costs.

4. Jurisdiction of this Court is invoked under 28 U.S.C. 1331 because the plaintiff hereinafter alleges that the defendants have trespassed on his right to receive retired pay from the Department of the Army under the provisions of the Act of April 3, 1939; 53 Stat. 557; 10 U.S.C. 456.

5. Jurisdiction of this Court is invoked under 28 U.S.C. 1331 because the plaintiff hereinafter alleges that the defendant directors of the bank have violated the provisions of Regulation "F", 12 C.F.R. 206, of the Federal Reserve Board.

6. Jurisdiction of this Court is invoked under the Fourteenth Amendment of the Constitution of the United States of America because the plaintiff hereinafter alleges that he has been unlawfully deprived of his personal property without due process of law contrary to this Amendment.

## COMPLAINT, COUNT 1.

1. The plaintiff alleges that he is now and has been a citizen of Illinois, continuously and exclusively, since in or about the year of 1928.

2. The plaintiff alleges that he has had his domicile and legal residence, continuously and exclusively, within the County of Cook, in the State of Illinois, since in or about the year of 1928.

3. The plaintiff alleges that he has had his actual abode, as distinguished from domicile and legal residence, within the County of Cook, in the State of Illinois, continuously and exclusively, since in or about the

year of 1932 with the exception of temporary absences while in the military service of the Army of the United States of America from January of 1942 until January of 1949.

4. The plaintiff alleges that he was not only legally resident but actually present as an inhabitant within the County of Cook in the State of Illinois from January of 1939 until and including the present day.

5. The plaintiff alleges that he has never been a citizen of the Commonwealth of Kentucky.

6. The plaintiff alleges that he has never maintained a residence nor an abode within the geographical limits of Fayette County, Kentucky.

7. The plaintiff alleges that the Citizens Union National Bank and Trust Company is a national banking association, incorporated on September 1, 1958 under the National Bank Act of the United States, as amended, 12 U.S.C. 21, 22, 23, et seq., as the successor to the Citizens Union Bank and Trust Company which was formed on December 31, 1954 by a merger of the Citizens Bank and Trust Company (incorporated July 2, 1931 as a successor in reorganization to the Guaranty Bank and Trust Company) with the Union Bank and Trust Company.

8. The plaintiff hereby alleges that he is reliably informed that on or about August 24, 1949 the directors of the Citizens Bank and Trust Company (now the Citizens Union National Bank and Trust Company) authorized their agent, Paul Slaton, a trust officer of the bank, to appear in the County Court of Fayette County, Kentucky and take the oath of office as committee for the plaintiff and to pledge capital stock of the bank as security for his performance of the office of committee as the agent of the bank.

9. The plaintiff alleges that the agent of the bank, Paul Slaton, a trust officer of the bank, has represented to the Army Finance Department that he is authorized by law to act as a personal representative of the plaintiff and as a consequence thereof has received a sum of money in excess of twenty-five thousand dollars ($25,000) and currently has on deposit in the trust department of the bank a sum in excess of thirteen thousand, seven hundred dollars ($13,700) which belongs by law to the plaintiff.

10. The plaintiff alleges that from August 24, 1949 until November of 1960, the directors of the bank, by and through their agent, Paul Slaton, a trust officer of the bank, have trespassed on his right to receive retired pay from the Department of the Army as aforesaid and have diverted his retired pay from his own use and dominion over it to their own financial gain and profit and to his own detriment and financial harm and that the defendants wrongfully persist until the present day in withholding from him the money they have received in his name.

11. The plaintiff alleges that each of the natural persons who are named on the caption of the complaint as directors of the bank have taken an oath of office as a director of the Citizens Union National Bank and Trust Company to diligently and faithfully administer the business affairs of the bank.

12. The plaintiff alleges that the directors of the defendant bank have a common-law duty to exercise the reasonable care and diligence which may be expected of their position in supervising the activities of their agent, Paul Slaton, a trust officer of the bank.

13. The plaintiff alleges that if the directors of the bank had exercised the care and diligence which may reasonably be expected of a director of a bank they would

have discovered that the plaintiff is not and never has been a citizen of Kentucky.

14. The plaintiff alleges that if the directors of the bank had exercised the care and diligence which may be reasonably be expected of a director of a bank in supervising the matters handled by their agent, Paul Slaton, a trust officer of the bank, they would have discovered that said Paul Slaton had never known nor seen the plaintiff.

15. The plaintiff alleges that if the directors of the bank had exercised the care and diligence which may reasonably be expected of a director of a bank they would have discovered that the plaintiff not only did not have a residence in Fayette County but was not physicially present in Fayette County, Kentucky during August of 1949.

16. The plaintiff alleges that if the directors of the bank had exercised the care and diligence which may reasonably be expected of a director of a bank they would have discovered that the petition filed in the County Court of Fayette County, Kentucky on August 24, 1949 for a committee for the plaintiff explicitly stated in the second paragraph of the petition that "William J. Powers, Jr. is a resident of Cook County, Chicago, Illinois"; thereby putting the defendants on notice of that fact.

17. The plaintiff alleges that if the directors of the bank had exercised the care and diligence which may reasonably be expected of a director of a bank they would have discovered that when the County Court of Fayette County, Kentucky issued an order appointing the aforesaid trust officer, Paul Slaton, to act as committee for the plaintiff that such order was and is void because of lack of due process of law contrary to the Fourteenth Amendment of the Constitution of the

United States of America in that the plaintiff has never appeared in that court nor consented to any exercise of jurisdiction over his person or property by that court.

18. The plaintiff alleges that if the directors of the bank had exercised the care and diligence which may reasonably be expected of a director of a bank they would have discovered that the situs of the personal property of the plaintiff in August of 1949 and since then until and including the present day was and is in the county of his legal residence which was then and is now the County of Cook in the State of Illinois; and for that reason the County Court of Fayette County, Kentucky had no jurisdiction over his personal property to enter an order concerning it.

19. The plaintiff alleges that he has been greatly harmed by the gross negligence of the directors of the bank in failing to properly supervise their agent, Paul Slaton, in his conduct as committee for the plaintiff.

20. The plaintiff alleges that he has been denied his retirement rights by the Department of the Army as a direct consequence of the tortious acts of the defendants.

21. The plaintiff alleges that he has been greatly handicapped by the representations of the defendants to the Department of the Army in the plaintiff's efforts to clarify his relations with the Department of the Army.

22. The plaintiff alleges that the defendants have caused him great mental anguish by their obstinate refusal to recognize the wrongfulness of their actions in interfering with the plaintiff's personal property.

23. The plaintiff alleges that the defendants have caused him to spend a great amount of time and effort as well as money to protect himself from the trespasses of the defendants.

24. The plaintiff alleges that the defendants have put him to a great inconvenience and aggravation by causing him to come to a strange city and to take legal action in order to protect himself from the unlawful actions of the defendants.

COMPLAINT, COUNT 2.

1. The plaintiff hereby incorporates and re-alleges each paragraph of paragraphs 1 through and including paragraph 11 of Count 1.

12. The plaintiff alleges that his right to receive retired pay from the Department of the Army under the authority of the Act of April 3, 1939; 53 Stat. 557; 10 U.S.C. 456, is a personal property right vested exclusively in him by an act of Congress.

13. The plaintiff alleges that he has never authorized any of the defendants to act as his agent.

14. The plaintiff alleges that he has never appeared in the County Court of Fayette, Kentucky nor ever consented to any exercise of jurisdiction by that court over him or his personal property and that the aforesaid judgment and orders of that court concerning him and or his personal property were and are void for lack of due process of law contrary to the Fourteenth Amendment of the Constitution of the United States of America.

15. The plaintiff alleges that when the directors of the defendant bank authorized their agent, Paul Slaton, a trust officer of the bank, to appear in the County Court of Fayette County, Kentucky on August 24, 1949 and take the oath of office as committee for the plaintiff that neither the bank, nor any of the directors, nor said trust officer, Paul Slaton, had any title to the retired pay which formed the corpus of the trust with which they are charged for the benefit of the plaintiff.

16. The plaintiff alleges that the directors of the bank had and have a duty to know that Kentucky Revised Statute 287.210 entitled "Powers of Trust Companies" does not allow a corporation to engage in the practice of law.

17. The plaintiff alleges that the directors of the defendant bank had a duty on August 24, 1949 to know that Kentucky Revised Statute 30.170 and Rules of the Court of Appeals 3.020 explicitly restricted the practice of law to natural persons only.

18. The plaintiff alleges that the defendants had and have a duty to know that a corporation may not appear in court in a representative capacity for a third person except by attorney.

19. The plaintiff alleges that when the directors of the bank directed Paul Slaton, a trust officer of the bank, to appear for the Citizens Bank and Trust Company (now the Citizens Union National Bank and Trust Company) on August 24, 1949 and other occasions since that day in the County Court of Fayette County, Kentucky in a representative capacity for the benefit of a third person, namely the plaintiff, the corporate defendant was engaged in the illegal practice of law by appearing in court by its salaried attorney-trust officer.

20. The plaintiff alleges that when the directors of the bank retained Paul Slaton as a trust officer of the bank they imposed on him a duty of fidelity and the highest loyalty from him to the bank and themselves; and when the defendant directors authorized the defendant, Paul Slaton, a trust officer of the bank, to appear in the County Court of Fayette County, Kentucky as their agent they imposed on him an additional duty of the highest fidelity and loyalty to the beneficiary of the trust which he assumed; and as a consequence therefore the defendant trust officer, Paul Slaton, now has a conflict of interest wherein Paul Slaton has a

duty of the highest fidelity and loyalty to the bank and its directors and also a conflicting duty of the highest fidelity and loyalty to the beneficiary of that trust, namely the plaintiff, where a genuine controversy exists between the bank and its directors on the one side and the beneficiary of that trust, the plaintiff, on the other side.

21. The plaintiff alleges that on March 3, 1961 and on March 14, 1961 he wrote to the clerk of the County Court of Fayette County asking for information from the Clerk and instead of a reply from the Clerk he received an answer from the defendant trust officer, Paul Slaton, dated March 20, 1961 stating that he and the defendant bank would be glad to help the plaintiff but since it appeared to him that the plaintiff had a legal problem the plaintiff should consult a lawyer and by that answer the defendant, Paul Slaton, resolved his conflict of interest in favor of the bank and against the plaintiff.

COMPLAINT, COUNT 3.

1. The plaintiff hereby incorporates and re-alleges each paragraph of paragraphs 1 through and including paragraph 11 of Count 1.

12. The plaintiff alleges that each of the natural persons, who are named as defendants herein on the caption of the complaint has taken an oath of office not to knowingly violate or willingly permit to be violated any provisions of the National Bank Act, as amended.

13. The plaintiff alleges that Regulation "F" of the Federal Reserve Banking System, 12 C.F.R. 206, entitled "NATIONAL BANK TRUST POWERS" has a section fofond in 12 C.F.R. 206.6 entitled "Trust Department Management" wherein in subsections (a), (b), (c), and

(d) are outlined the duties and responsibilities of the directors of a national bank and trust company to supervise the trust departments of such banks.

14. The plaintiff alleges that if the directors of the defendant bank had properly followed the provisions of Regulation "F" in supervising the matters handled by their agent, Paul Slaton, a trust officer of the bank, they would have discovered that the plaintiff is not and never has been a citizen of the Commonwealth of Kentucky.

15. The plaintiff alleges that if the directors of the bank had actively supervised the matters handled by their agent, Paul Slaton, a trust officer of the bank, as required by Regulation "F" they would have discovered that the aforesaid Paul Slaton had never known or seen the plaintiff.

16. The plaintiff alleges that if the directors of the bank had supervised the matters handled by their agent, Paul Slaton, a trust officer of the bank, in the manner required by Regulation "F", they would have discovered that the plaintiff not only did not have a residence in Fayette County but was not physically present in Fayette County, Kentucky during August of 1949.

17. The plaintiff alleges that the directors of the bank have a care and duty under Regulation "F" to know that when the County Court of Fayette County, Kentucky issued an order appointing Paul Slaton as committee for the plaintiff that such an order was void because of the lack of the due process of law contrary to the Fourteenth Amendment of the Constitution of the United States of America in that the plaintiff has never appeared in that court nor consented to any exercise of jurisdiction over his person or his property by that court.

18. The plaintiff alleges that the directors of the bank have a care and duty under Regulation "F" to know that the situs of his personal property in August 1949 and since then until and including the present day was in the county of his legal residence which was then and is now the County of Cook in the State of Illinois; and for that reason the County Court of Fayette County, Kentucky had no jurisdiction to enter an order concerning his personal property.

19. The plaintiff alleges that he has been greatly harmed by the gross negligence of the directors of the bank in failing to properly supervise their agent, Paul Slaton, in his conduct as committee for the plaintiff.

20. The plaintiff alleges that he has been denied his retirement rights by the Department of the Army as a direct consequence of the tortious acts of the defendants.

21. The plaintiff alleges that has has been greatly handicapped by the representations of the defendants to the Department of the Army in the plaintiff's efforts to clarify his relations with the Department of the Army.

22. The plaintiff alleges that the defendants have caused him great mental anguish by their obstinate refusal to recognize the wrongfulness of their actions in interfering with the plaintiff's personal property.

23. The plaintiff alleges that the defendants have caused him to spend a great amount of time and effort as well as money to protect himself from the trespass of the defendants.

24. The plaintiff alleges that the defendants have put him to a great inconvenience and aggravation by causing him to come to a strange city to take legal action in order to protect himself from the unlawful actions of the defendants.

## PRAYER FOR RELIEF.

1. Wherefore the plaintiff asks that he be granted the right of trial by jury as provided by the Seventh Amendment of The Constitution of the United States of America.
2. The plaintiff asks that the defendants be required to surrender to him the monies they received in his name plus six per cent (6%) interest for the length of time they have kept such monies in their possession.
3. The plaintiff asks that the defendants be forever enjoined from representing to any person that they have ever performed any service of value to the plaintiff, or acted as his agent.
4. The plaintiff asks damages in the amount of Two Hundred Fifty Thousand Dollars ($250,000) for the damage and harm caused to him by the defendants generally and the gross negligence of the directors of the bank in particular.
5. The plaintiff asks such other and further relief as may be proper according to the customs and usages of law.

(s) William J. Powers, Jr.
Plaintiff Pro Se,
664 Oakton Street,
Des Plaines, Illinois.

United States of America )
Eastern District of Kentucky ) ss:

I, Davis T. McGarvey, Clerk of the United States District Court for the Eastern District of Kentucky, do hereby certify that the annexed and foregoing is a true and full copy of the original Complaint filed June 7, 1962 in the case of William J. Powers, Jr., Plaintiff, vs. Citizens Union National Bank & Trust Company, individually and as com-

mittee de son tort, et al, Defendants, No. 1479 on the Lexington Docket now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Lexington, Ky., this 24 day of September, A. D. 1963.

Davis T. McGarvey, Clerk,
By (s) Wavelyne H. Smith,
Deputy Clerk.

(Seal)

## APPENDIX "C"

COMMONWEALTH OF KENTUCKY

vs:—**SUMMONS**

WILLIAM J. POWERS
Veterans Administration Hospital

Executed June 6, 1947, the within summons on William J. Powers confined in the U. S. Veterans Hospital, by delivering a true copy thereof to the said William J. Powers and also on June 6, 1947 by delivering to Dr. F. M. Cook, manager of the U. S. Veterans Hospital, and the person having charge of the said William J. Powers, a true copy of the within summons.

Ernest Thompson, S. F. C.
O. H. Mauser, D. S.

THE COMMONWEALTH OF KENTUCKY

To the Sheriff of Fayette County, Greetings:

You are hereby commanded to summon William J. Powers to answer a petition filed against him in the Fayette Circiut Court by the Commonwealth of Kentucky on information against him for the purpose of inquiring into the question of whether he is a person of sound or unsound mind; and notify him that the said hearing is set for 10:00 o'clock A. M. on the 9th day of June, 1947.

You are also commanded to summon the following persons to be present at said hearing, and notify them of the time and place and purpose thereof:

_____Father
_____Mother
_____Husband
_____Wife
_____Near Relative

and Manager, F. M. Cook, M. D., U. S. Veterans Administration Hospital, the person having custody of said defendant or residing with said defendant, is hereby notified and summoned to appear with the defendant at the time and place stated in this summons.

If any of the aforesaid persons, after being summoned, fail to appear, they will be proceeded against for contempt.

You will make due return on this summons as provided by law.

Witness, Geo. E. DeLong, Clerk of said Court, this 5th day of June, 1947.

(s) Geo. E. DeLong, C. F. C. C.

James Park, P. W.

State of Kentucky }
County of Fayette } Set.

I, Katherine M. Laden, Clerk of the Fayette Circuit Court, within and for the County and State aforesaid, do hereby certify that the foregoing attached Two (2) pages contain a true and correct copy of the Summons issued on the 5th day of June, 1947, and the endorsements thereon, by the Fayette Circiut Court in the action between Commonwealth of Kentucky vs. William J. Powers, Jr. in Inquest Book 14, Page 65, as fully as the same remains of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at my office in Lexington, Kentucky, this 19th day of September, 1963.

(s) Katherine M. Laden,
Clerk of Fayette Circuit Court
of Kentucky.

(Seal).

State of Kentucky )
County of Fayette ) Set.

I, Joseph J. Bradley, Judge of the Twenty-Second Judicial District of Kentucky, and ex-officio Judge of the Fayette Circuit Court, Criminal, Common Law and Equity Division, do hereby certify that Katherine M. Laden, who signed the foregoing certificate, is now, and was at the time of signing the same, Clerk of said Court, duly elected, qualified and sworn; that her said signature in her own genuine and proper handwriting, and that said certificate and authentication are in due form of law.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court to be hereunto affixed at Lexington, Kentucky, this 19th day of September, 1963.

(s) Joseph J. Bradley,
Judge of Twenty-Second Judicial District of Kentucky, Criminal, Common Law and Equity Division.

(Seal)

State of Kentucky )
County of Fayette ) Set.

I, Katherine M. Laden, Clerk of the Fayette Circuit Court within and for the County and State aforesaid, do hereby certify that Hon. Joseph J. Bradley, Judge of the Criminal, Common Law and Equity Division, who signed the foregoing certificate, is now and was at the time of signing the same Judge of said Court, duly elected, commissioned and sworn, and that this said signature is in his own handwriting.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at my office in Lexington, Kentucky this 19th day of September, 1963.

(s) Katherine M. Laden,
Clerk of Fayette Circuit Court of Kentucky.

(Seal)

United States of America
Eastern District of Kentucky } ss:

I, Davis T. McGarvey, Clerk of the United States District Court for the Eastern District of Kentucky, do hereby certify that the annexed and foregoing is a true and full copy of the original Summons of Fayette Circuit Court, with Sheriff's return thereon, filed as an exhibit #3 attached to the Motions filed by the Defendants on June 27, 1962, and is also filed and marked as Laden Exhibit #3 with the deposition of Katherine M. Laden, filed in the case of William J. Powers, Jr., Plaintiff vs. Citizens Union National Bank and Trust Co., individually and as committee de so tort, et al., Defendants, No. 1479 on the Lexington Docket now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Lexington, Ky., this 20 day of September, A. D. 1963.

Davis T. McGarvey, Clerk.
By (s) Wavelyne H. Smith,
(Seal) Deputy Clerk

SUPREME COURT, U.S.
FILED
OCT 25 1963
JOHN DAVIS, CLERK

No. 351

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1963

WILLIAM J. POWERS, JR.

v.

PAUL SLATON

PETITIONER'S REPLY BRIEF AND SUPPLEMENTARY APPENDIX

UNITED STATES LAW PRINTING CO., CHICAGO 37, ILL. LAFAYETTE 3-4343

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1963

## No. 351

WILLIAM J. POWERS, JR.,

*Petitioner,*

vs.

PAUL SLATON,

*Respondent.*

## PETITIONER'S REPLY BRIEF AND SUPPLEMENTARY APPENDIX

Petitioner has been quite interested to discover that a second petition for a writ of certiorari was filed in this Court on September 5, 1963 in Docket No. 441, entitled *Roney v. Board of Election Supervisors of Cecil County, Maryland* in which two doctors who reside on the Perry Point Veterans Administration Hospital seek to review the decision of the Court of Appeals of Maryland reported at 231 Md. 561; 191 Atlantic 2nd 446 and in which that

Court held on June 7, 1963 that the doctors were not residents of Maryland because the Perry Point Veterans Hospital was under the exclusive jurisdiction of the United States and they had no residence within the State of Maryland.

## REPLY TO PART ONE

### A. ON PAGES 4 AND 5 OF RESPONDENT'S RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI THE COUNSEL FOR RESPONDENT AGREED WITH PETITIONER THAT THE DISTRICT COURT AND THE COURT OF APPEALS FOR THE SIXTH CIRCUIT DID NOT DECIDE ANY FEDERAL QUESTIONS.--

Basically, that is why the petitioner is here now before this Court, for review of the failure of the Courts below to decide questions which they should not have passed by.

Counsel for respondent advanced the argument that the complaint in the District Court was so vague and imaginary that respondent could not answer it.

It was the respondent, however, who introduced Exhibits "A"; "B"; "C"; which were respectively the record of the Circuit Court of Fayette County of May 17, 1947 and June 9, 1947; the order of the County Court of Fayette County on July 26, 1947 for the first appointment of a committee; and the petition and order of the County Court of Fayette County on August 24, 1949 for the second appointment of a committee. These records which also included the alleged affidavits of the physicians were attached to respondent's motion to dismiss.

It is quite clear that respondent understood enough to answer the complaint.

It is also quite clear that the complaint was sufficient enough under the doctrine set out by this Court in *Conley v. Gibson*, 355 U.S. 41, pages 45-6 and 48; 78 Sup. Ct. 99; 2 Law Ed. 2nd 80.

It must be remembered also that federal procedure does not require a plaintiff to plead elaborate detail of facts which are peculiarly within the knowledge of a defendant.

## B. THE RESPONDENT HAS A COMMON LAW DUTY AS WELL AS A STATUTORY DUTY NOT TO INTERFERE WITH THE PERSON OR PROPERTY OF ANOTHER WITHOUT LAWFUL AUTHORITY.

The responsibility of the respondent is the same as every one else in his common law obligation to refrain from interfering with either the person or property of another person and he does so only at his own peril.

The respondent has an additional set of duties which are set out here in the Supplementary Appendix as Exhibits M through and including "Q".

The respondent has the special duty of a trust officer of a bank to know that he cannot take the personal property of another without lawful authority whether he does so in his own name or as the agent of another.

These statutes imposed a duty of knowledge on the respondent on August 24, 1949 which he completely failed to recognize.

The Court of Appeals of Kentucky said in *Super v. Foster*, 244 Ky. 658, at page 662, that (51 S.W. 2nd 927):

> "A 'void judgment' is in legal effect no judgment; no rights are divested; and no rights are obtained or barred. *Carpenter v. Moorebock*, 151 Ky. 506, 152 S.W. 575; *Adams Express Co. v. Bradley*, 179 Ky. 238, 200 S.W. 340."

The Court of Appeals of Kentucky also said, in *Small* v. *Bailey*, 356 S.W. 2nd 756-757, that:

> "The Court was in error in this conclusion because the law is well settled that an agent of a corporation is personally liable for a tort committed by him though he was acting for the corporation. *Pirtle's Adm'x.* v. *Hargis Bank & Trust Company*, 241 Ky. 455, 44 S.W. 2d 541.

## REPLY TO PART TWO.

The insistence of counsel that the Uniform Veterans Guardianship Act of Kentucky is a cure all for the problems of the respondent overlooks the fact that Chapter 388, *supra*, does not displace the laws regulating lunacy inquests but merely makes some changes in the methods of appointing guardians or committee and assumes that the necessity has already been found.

The argument that two doctors waived exclusive federal jurisdiction and receded federal territory to Kentucky by merely writing a letter of information to the Court Clerk is so ridiculous that it does not justify answer except to point out the difficulties the Government will have in knowing from day to day what property it owns and controls if that argument is accepted by this Court.

The argument is historically inaccurate in that the State cession statute was originally passed in 1892 and was in effect when the land for the Hospital was purchased although it is true that the statute was amended in 1954 as respondent says.

## REPLY TO PART THREE.

The service of process in this case would not have been valid in any event because the cause of action did not arise within the jurisdiction of Kentucky.

The service has been impeached, however, on April 12, 1963 during taking of depositions by William A. Wallace, counsel for respondent and also counsel for the Citizens Union National Bank and Trust Company, in a second law suit where Mr. Hauser who signed the return of service admitted on cross examination under oath that he had never known any of the persons he had served at the Veterans Hospital except one personal friend (not the petitioner) and that he had always relied on a hospital attendant to identify the persons served and that he could not swear to their identity of his own knowledge.

## CONCLUSION

The petitioner respectfully prays that the orders and judgments of the United States Court of Appeals for the Sixth Circuit and the United States District Court for the Eastern District of Kentucky be reversed; that the thirty-five day commitment order of May 17, 1947 be declared void; that the lunacy inquest of June 9, 1947 be declared void; that the first appointment of a Committee on July 26, 1947 by the County Court of Fayette County be declared void; and that the Second appointment of a committee on August 24, 1949 by the County Court of Fayette County, Kentucky be declared void.

Respectfully submitted,

WILLIAM J. POWERS,
*Petitioner Pro Se*

## APPENDIX "M"

VETERANS ADMINISTRATION
HOSPITAL
Lexington, Kentucky
July 7, 1949

Your File Reference:
In Reply Refer to 14HP10MA
C-10,894,687
Powers, William J.

Mr. George E. DeLong
Clerk, Fayette Circuit Court
Lexington, Kentucky

Dear Mr. DeLong:

Mr. William J. Powers, Jr., was committed to this hospital by your court May 17, 1947. He was granted a ninety-day trial visit January 21, 1949. The trial visit was extended and the veteran has now completed a period of six months on this status.

Mr. Powers has apparently made a satisfactory adjustment and is being discharged from trial visit status, effective July 20, 1949.

Very truly yours,

*Carr S. Greenhow*
Carr S. Greenhow
Assistant Registrar.

## APPENDIX "N"

Kentucky Revised Statutes
1948 Edition
Chapter 387

**387.025 Application for appointment of guardian or committee; what to contain; notice.** Before being appointed as guardian or committee, every person shall make and file in duplicate a written application under oath, which must state the name, age and residence of the ward, the ward's husband or wife and each of the ward's parents, or if there be no spouse or parents living in the state, the names, ages and residence of the next of kin, the name of the person having custody of the ward, a brief description of the ward's estate and its probable value, and the estimated annual income therefrom. A duplicate copy of said application shall be mailed by the clerk to the Commissioner of Revenue of the State of Kentucky. The court shall thereupon appoint a time for hearing such application. Notice thereof shall be given to the minor if more than fourteen years of age; to the person having custody of the ward; to the husband or wife and each parent of the ward, or if none, to the next of kin residing in the state in the manner provided in KRS 395.016. (1942, c. 107, § 5)

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Administrator of Veterans' Affairs is necessary party when beneficiary of Veterans' Administration is involved. KRS 388.200

Form of petition for appointment of guardian or committee for beneficiary of Veterans' Administration. KRS 388.230

## APPENDIX "O"

Kentucky Revised Statutes
1948 Edition
Chapter 387

**387.210 [2149; 2152] Jurisdiction of county courts over persons of unsound mind and their committees; bond of committee.** (1) The county courts shall have exclusive jurisdiction of the appointment and accounting of committees. Application shall be filed and notice given in the same manner required for guardians. There shall be filed with said application a statement from the clerk of the circuit court that the incompetent has been adjudged as such. Appointment shall be made, bond executed, and accounting required in the same manner as guardians and actions upon such bond may be maintained by any person aggrieved by a breach thereof. (1942, c. 161, § 9)

(2) An appeal may be taken to the circuit court from the judgment of a county court appointing or removing, or failing to appoint or remove, a committee by any person interested in the person or estate of the person of unsound mind, who shall execute a bond for costs as in other appeal cases.

## APPENDIX "P"

Kentucky Revised Statutes
1948 Edition
Chapter 387

**387.230** [2153; 4711-a] **Powers and duties of committee; personal charge may be given to another person; compensation.** (1) The power and duty of the committee of a person of unsound mind shall, in all respects, be the same as those of the guardian of a minor; except as to education.

(2) The court may appoint a person other than the committee to take charge of the person of unsound mind when he is not confined in an asylum, and may order his committee to make necessary provision for his support.

(3) Committees of persons of unsound mind shall receive the same compensation for their services, as is provided in KRS 386.180 for trustees of estates.

## APPENDIX "Q"

Kentucky Revised Statutes
1948 Edition
Chapter 388

**388.230 Petition for appointment of guardian or committee; who to be appointed.** (1) A petition for the appointment of a guardian or committee for any minor or mentally incompetent beneficiary of the Veterans Administration may be filed in the court having jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the

person so entitled shall neglect or refuse to file such a petition within thirty days after mailing of notice by the Veterans Administration to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed by or on behalf of any responsible person residing in this state.

(2) The petition for appointment shall set forth the name, age, place of residence of such beneficiary, the name and place of residence of the nearest relative, if known, and the fact that such beneficiary is entitled to receive benefits payable by or through the Veterans Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of such beneficiary, and the name, age, relationship, if any, occupation and address of the person proposed for appointment as guardian or committee. Notwithstanding any provision of existing law as to priority, the court may appoint a capable individual, bank or trust company as guardian or committee, if the person entitled to priority fails to apply, or, if after hearing the court determines it is for the best interest of such beneficiary to appoint another.

(4) In the case of a mentally incompetent beneficiary, the petition shall show that such beneficiary has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans' Administration. (1942, c. 25, s. 4).